UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

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IN RE: AUTOMOTIVE PARTS ANTITRUST LITIGATION MDL NO. 2311

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STATUS CONFERENCE / MOTION HEARING

BEFORE THE HONORABLE MARIANNE O. BATTANI
United States District Judge
Theodore Levin United States Courthouse
231 West Lafayette Boulevard
Detroit, Michigan
Wednesday, February 12, 2014

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Detroit, Michigan
Wednesday, February 12, 2014
at about 11:00 a.m.

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(Court and Counsel present.)

THE CASE MANAGER: All rise.

The United States District Court for the Eastern District of Michigan is now in session, the Honorable Marianne O. Battani presiding.

You may be seated. Court calls In Re: Automotive Parts Anti-Trust litigation.

THE COURT: Good morning.

ATTORNEYS PRESENT: Good morning.

THE COURT: We are down some defendants today. We usually have every seat filled here. Okay.

Welcome. I am sorry that this day turned out to be so frigid. I'm kind of amazed some of you from the east made it out from what I heard on the weather report this morning, so we will have to make good use of this day to reward you for that. All right.

Let's start. I thought we would simply start with the agenda and go through it as we did before, and will start our motions as soon as we get here. Okay.

Mr. Fink, are you going start this?

MR. FINK: Certainly, Your Honor, thank you. Your

Honor, there are not very many issues at the beginning that really require any discussion.

THE COURT: Yes. I have looked over the status of the service. It seems to me that, because I was looking ahead as to how many motions we may have coming in, that we have approximately ten more parts where there is service completed roughly. You don't have to count them, just --

MR. FINK: Roughly that sounds correct.

THE COURT: Yes. Okay.

MR. FINK: So far.

THE COURT: So far.

MR. FINK: Your Honor, the first -- I'm not trying to rush the Court, it appears that the first item that involves any issue to be addressed is related to -- in the depositions, number 3(B), the issue of Ford's request for additional language to be added prior to their support for the stipulation. And if that is the first item the Court wants to hear on -- hear from, Eugene Spector is here to speak to that.

THE COURT: Let me just -- which number is that, you said --

MR. FINK: That's 3(B). I'm not trying to rush the Court through this -- I just have looked.

THE COURT: I'm going go back but I have 3(B) as endorsement of the stipulation between Yazaki. Is that what

you are talking about?

MR. FINK: Yes.

THE COURT: Let me go back for everybody else. Does anybody have anything to add or any questions on number 2(A) or (B), the discovery requests?

(No response.)

THE COURT: Okay. So then we are on 3. Mr. Spector?

MR. SPECTOR: Good morning, Your Honor.

THE COURT: Good morning.

MR. SPECTOR: I think that the problem that we have with the Ford situation is this, we are faced with Ford suing one defendant and seeking to participate in depositions of multiple defendants. And, for example, the stipulation that has been presented to the Court in the Yazaki -- with Yazaki, Ford hasn't sued Yazaki, and how we can allocate time to Ford under those circumstances since they are not directly a party with regard to Yazaki is a problem.

THE COURT: Well, you know, before you go on with that, as I am thinking of this, this Ford issue, which is prominent in the orders that we need to resolve today on discovery, I think this is all pretty well related, do you not?

MR. SPECTOR: I agree.

THE COURT: Let's just hold off on that until we go

through the others and do that particular issue -- we will do all of Ford at one time.

MR. SPECTOR: Fine. Thank you, Your Honor.

THE COURT: Thank you. So the next item, because I'm holding off on Ford, is the settlement on the instrument panel cases with the -- I have the end payers and the auto dealers, that is with Nippon.

MS. SALZMAN: I believe it is Nippon.

THE COURT: Nippon. Okay.

MS. SALZMAN: Your Honor, Hollis Salzman. We have a settlement, which is part of our preliminary approval papers which we believe is an excellent settlement for the class. It is an all-cash payment of $4.56 million plus extensive and early cooperation with the plaintiffs in prosecuting the case against the remaining defendants. We are here seeking preliminary approval of that settlement agreement.

THE COURT: Let me ask you one thing that I have a question on, the preliminary approval. I will hear any opposition to it, I don't know that there is any opposition to it because I haven't received it. The one thing I had a question about under the notice, you know under the rules you have to give notice, and you asked to delay your notice, which makes sense, but my question to you is is there any provision for this delayed notice in any case law?

MS. SALZMAN: Well, there are other cases in which notice has been delayed for similar reasons; to provide an opportunity for other settlements to occur in the case so that when notice is disseminated to the class that there is a -- you know, the expense is shared among those cases. I can give you some of the cases where that has happened, if you would like. That's not necessarily case law because what you have is you have a preliminary approval order and then a notice motion sometime later.

THE COURT: All right. Is there any harm to anyone by delaying -- to any of the claimants by delaying the notice?

MS. SALZMAN: I don't think there is harm and, in fact, I think there is a benefit to the class because typically the notice is paid out of the settlement funds, so if there is economy to sharing the costs of notice across settlements then the class members would ultimately have more when distribution happens to the class members.

THE COURT: Okay. All right. And at this stage of the proceeding you need an approval of the Court for this preliminary process?

MS. SALZMAN: Yes, we do, Your Honor. And preliminary approval is a trigger for some of the more significant cooperation that we would be entitled to under the settlement agreement.

THE COURT: I read that. That is a very interesting part of the settlement agreement.

MS. SALZMAN: It is. It is not -- it is typical in settlements.

THE COURT: In the antitrust cases?

MS. SALZMAN: Yes, yes.

THE COURT: Okay. I know that we had two objections -- well, I don't know if they were objections but statements from I think it was Yazaki and Denso regarding the class.

MS. SALZMAN: Right. I can speak to that for a moment, and then if they want to speak. I think that there were responses to the motion, and the response was their concern that as part of preliminary approval you are preliminarily approving a settlement class, and as is typically done in these cases, in our order on preliminary approval we have language that preserves the remaining defendants, the non-settling defendants' rights to oppose class certification when it is appropriate to hear a contested class certification motion. And, in fact, I think that the defendants acknowledge that it is in the order but they merely wanted to bring the Court's attention if you were going to modify the proposed order in any way that if you didn't include that provision to protect their rights they would like to be heard.

THE COURT: Okay.

MS. SALZMAN: I don't know if that covers it.

THE COURT: Do you want to comment on that?

MS. FISCHER: Michelle Fischer from Jones Day on behalf of Yazaki, but also speaking on behalf of Denso. Yazaki and Denso are the non-settling defendants, and Hollis did accurately represent we do not oppose the settlement but definitely endorse and encourage the inclusion of paragraph 11 of their proposed order to protect our rights, and in the event that the Court chooses not to include the language in paragraph 11 we would simply request time to fully develop the record and fully oppose any motion for class certification.

THE COURT: All right. You have no objections with the provision that is now in the order preserving exactly what you're saying?

MS. FISCHER: No. We actually believe that paragraph 11 is important and would promote its inclusion.

THE COURT: Okay.

MS. SALZMAN: And then just certainly down the road the plaintiffs' position is that defendants do not have standing at preliminary approval to challenge a motion for preliminary approval for settlement despite the fact that they have raised this issue, I don't want the Court to think that plaintiffs agree that they have standing to file any

objections.

THE COURT: Okay. But it is in the order and --

MS. SALZMAN: It is.

THE COURT: And you are going to keep that in the order -- the Court will keep it in the order that it signs.

MS. SALZMAN: Yes, please.

THE COURT: Okay. Do you want to put down the basics for it on the record so that you have it on the record?

MS. SALZMAN: Well, I can go through it, absolutely.

THE COURT: Yes.

MS. SALZMAN: The settlement is an excellent result for the class. It is an icebreaker settlement which strengthens plaintiffs' hand in litigation. It calls for 4.56 all-cash settlement and invaluable significant and early cooperation in assisting plaintiffs in the prosecution of the case against the remaining defendants. Nippon Seiki has already made the payment into the escrow fund which would be subject to the return if the Court did not preliminarily approve the settlement. And I would also like to commend Nippon Seiki defendants for coming forward to settle with the class plaintiffs here. As Your Honor is probably aware, in the criminal court -- excuse me. In the criminal court plea the criminal court judge here in the Eastern District of

Michigan specifically held that he would not be ordering restitution as part of the guilty plea because of the parallel civil class actions, and so Nippon Seiki here is making restitution to the class, and I commend them for doing so.

In evaluating whether settlement is fair, reasonable and adequate courts consider a number of factors including the expense, duration and uncertainty of continued litigation. Here while you can see that the motions were hard fought at the motion to dismiss stage, we have discovery, class certification, trial and appeal, and even if successful, which plaintiffs believe they will, that will not occur until many years down the road.

The settlement is the result of arm's-length negotiation between experienced counsel on both sides. Again, the settlement negotiations took place over a period of 13 months of numerous in-person and telephone meetings among counsel, and for those reasons we believe that the Court should preliminarily approve the settlement.

THE COURT: All right. Do you want to say anything on behalf of Nippon?

MR. VICTOR: Paul Victor. We are fine with it.

THE COURT: We just don't want a one-sided settlement. Okay. All right. The Court has reviewed -- Counsel.

MR. CUNEO: Your Honor, Jonathan Cuneo for the auto dealers. We would respectfully adopt Ms. Salzman's statement of the benefits of the settlement as our own. I don't need to take the Court's time in rehashing it. The consideration that is flowing to us though is 1.44 million.

THE COURT: Okay. I noted that.

MR. CUNEO: That would be flowing to us. Thank you, Your Honor.

THE COURT: Thank you. Okay. I think that's everybody.

MS. SALZMAN: Thank you, Your Honor.

THE COURT: The Court does note the terms of the settlement, they have just been put on the record. I find that they are fair, reasonable and adequate, and I give preliminary approval. I take great heed in the fact that learned counsel has worked out the settlement amongst themselves over a period. The Court is well aware of the qualifications of counsel, and experienced counsel. I believe this is an arm's-length transaction. As to the amount of money, it appears to be a reasonable amount given that the cooperation agreement in this settlement is quite extensive. The Court notes that also it has to consider the fact that this settlement considers that it's the expense and duration, certainly the uncertainty of continued litigation goes to enhance its reasonableness.

Next we get to the class. The Court would include the provision that is in there -- what was that, paragraph 11, so that these rights are preserved for future adjudication in terms of class, but will approve the class as stated right now provisionally.

Certainly there is numerosity, commonality, typicality, there is adequacy of representation that the Court has already gone over, so I do believe that this class meets the requirements of Rule 23, and the Court also would appoint the interim co-lead counsel as class counsel in that I think that needs to be stated. So I will sign the settlement document if you -- I'm not sure if I have a proposed or the final here, I don't remember what the title is, but if you would send me the document the Court will sign it. Okay. So that provisional --

MR. CUNEO: Your Honor --

THE COURT: -- approval is done.

MR. CUNEO: You used the word settlement. I want to make sure we are clear it is not settlements.

THE COURT: It is what?

MR. CUNEO: It applies to the dealers as well.

THE COURT: Yes, it is settlements applying to both the dealer and the direct.

MR. CUNEO: That's the way I took it but I just wanted to make sure.

THE COURT: It is end payers, dealers. What happened to the direct, somebody called it?

MR. FINK: Your Honor, Joe Kohn will speak to that.

MS. SALZMAN: Just one housekeeping item, Your Honor. We will make sure that your chambers has the appropriate orders to sign.

THE COURT: Okay.

MS. SALZMAN: Thank you.

THE COURT: Now, the only papers that I had dealt with the end payer and the auto dealers, they did not deal with the direct, but we are going to hear about that right now.

MR. KOHN: Thank you, Your Honor. Good morning, Joseph Kohn for the directs. May it please the Court.

We are pleased to be able to inform the Court that the direct purchaser class has also reached an agreement in principle with Nippon Seiki -- the three Nippon Seiki entities. We have not finalized the agreement, we have exchanged papers, we anticipate doing so shortly. We are not at liability to get into terms but they will be apparent, we would hope, within a couple weeks until they have their official announcements, et cetera.

We would be submitting those -- a similar motion for approval, a draft order that we are preparing will include that same language that Yazaki and Denso has been

concerned about, which has become somewhat typical in cases where there are partial settlement or a settlement with an initial defendant.

THE COURT: Okay.

MR. KOHN: And while it is never possible to predict when this many lawyers will actually get papers with all Is dotted and Ts crossed, we would hope it should be within a couple weeks. As I said, we had drafts that have already gone out. We would be prepared to be available for a conference or a hearing on preliminary approval of that settlement promptly and perhaps not wait if the Court preferred until the next status conference, we think maybe that could be something that could be handled in the interim.

THE COURT: We could handle that on a motion with just the necessary parties, it doesn't seem like everybody would have to be here for that, so why don't we do that. I don't want to wait that long, if you have got it resolved let's gets it on the record.

MR. KOHN: Thank you, Your Honor.

THE COURT: Thank you very much. Okay. All right.

Then the next item is the update on the stipulations between plaintiffs and defendants regarding the depositions. Who is speaking to that? This is on instrument panel except as it relates to Ford, let's not argue that.

MR. FINK: Your Honor, Greg Hansel, one of the

co-leads for the direct purchasers, will speak to that.

THE COURT: Okay.

MR. HANSEL: May it please the Court, good morning, Your Honor.

THE COURT: Good morning.

MR. HANSEL: Greg Hansel for the direct-purchaser plaintiffs.

Denso has agreed with the class plaintiffs on a form of stipulation to depose incarcerated employees of Denso, and I believe that has been circulated and signed by -- is it signed by everybody now? Has it been filed yet?

MR. CHERRY: No.

MR. HANSEL: So we expect to file that today or tomorrow with the Court for the Court's consideration.

THE COURT: So there is some agreement and these people will be able to be deposed before they leave this --

MR. HANSEL: Or they would come back or make themself available at some agreed-upon location. The purpose behind these stipulations such as the Yazaki stipulation, the Denso stipulation, is to just make sure people don't leave the country and become very difficult to locate and depose say in Japan. So we have been trying to reach these stipulations before people get out of prison and leave so that it is -- there is a procedure and we don't have to attempt to take their depositions in prison on a hurry-up

basis.

THE COURT: Okay. Thank you.

MR. HANSEL: Thank you.

THE COURT: All right. Then there is the Nippon Seiki move to dismiss the Florida complaint. Is there anything else going on with that? Otherwise that's just on the pleadings. Any comments on that?

MR. VICTOR: Your Honor, Paul Victor. Is Mr. Fraser --

MR. FRASER: Tim Fraser for Florida.

MR. VICTOR: Do you want us to give a report?

THE COURT: No, there is nothing really to report, right?

MR. FRASER: No.

MR. VICTOR: No.

THE COURT: The pleadings are in, it looks like with the reply due in May, the beginning of May, maybe we can schedule that for our June oral argument for our June meeting. Does that work with you?

MR. VICTOR: I guess maybe this is not clear, we are in settlement discussions with them and we do have sort of an agreement in principle.

MR. FRASER: Yeah, we have reached an agreement in principle and --

MR. VICTOR: We need to try to paper it now, so

this may disappear.

THE COURT: That was not clear to me. Okay. Good. Then we won't -- okay. Although if you don't resolve it -- I'm assuming that you will resolve it, but if you don't resolve it then you would be ready to argue in June?

MR. VICTOR: Yes.

THE COURT: Okay. The fuel senders, we are going to get to oral argument on that soon so we don't need anything else.

Heater control, I see there is a stipulation as to the depositions also?

MR. HANSEL: Your Honor, it is the same situation that I just discussed with respect to instrument panel clusters, the same holds true for heater control panels with Denso.

THE COURT: Okay. Thank you.

MR. HANSEL: Thank you.

THE COURT: On the bearings, this is -- will be ready to argue at our June 4th meeting although I see a note that the plaintiffs suggest they don't need oral argument. Defendants have any comment on that.

MR. MAHR: Your Honor, Eric Mahr, Wilmer Hale, representing the Schaeffler defendants and speaking on behalf of the join defendants groups. We disagree, we think you do need oral argument and it would be helpful, and you have

already ruled it is appropriate.

THE COURT: Thank you.

MR. WILLIAMS: Good morning, Your Honor. Steve Williams for the plaintiffs.

Obviously it is a suggestion, whatever the Court deems appropriate would be what we will do. Having just done our opposition briefs, having had Two or three rounds of argument, another one today, it seems plain, almost everything in those papers you have already heard, you have already considered. Does AGC apply or not? Nothing about the facts alleged in that case will be any different here, and it would seem to create greater efficiencies and move these cases forward if where appropriate some of these could be ruled on on the papers, and if oral argument is necessary in part or in whole of course we will be here and we will argue.

THE COURT: Okay.

MR. WILLIAMS: Thank you.

THE COURT: We'll be talking about that in just a minute.

MR. VICTOR: Your Honor, on behalf of the NTN defendants in that matter, we filed our own separate motions as well and requested argument, the plaintiffs requested argument, we do want that argument, please.

THE COURT: All right.

MR. MAHR: Your Honor, if you are considering their motion I would like to go into more depth why I think it is inappropriate to unschedule oral argument that has been scheduled for many months now. I don't know if you are considering their suggestion seriously.

THE COURT: Well, no, I'm not considering that because I told you, the defendants, that you each would have an opportunity to present their case, that because I rule on one doesn't mean that you don't get to argue, but we are going to talk about that a little later because some of these things are quite repetitive, and if you get repetitive you don't need to repeat, at least not that part of the argument.

MR. MAHR: We got that part of the message but also got the part of the message that we would have our chance to be heard.

THE COURT: All right. So those are scheduled for June 4th.

MR. MAHR: Thank you.

THE COURT: Occupant safety, same thing on the depositions?

MR. HANSEL: We are not quite as far along on this one, Your Honor. AutoLiv, one of the defendants in the occupant safety systems, has an employee who is currently incarcerated who is expected to be released in October of this year, and we have either -- this morning one of my

colleagues indicated that he may approach the AutoLiv counsel here today to begin discussions of a similar stipulation with AutoLiv that we hope to enter into.

THE COURT: Okay.

MR. HANSEL: Thank you.

THE COURT: Thank you. And these also --

MR. SPECTOR: If I might, Your Honor? Eugene Spector on the occupant safety cases. There is a reference to an amendment to the consolidated-amended complaint, item C on the agenda, under paragraph 6. I wanted to address that very briefly to the Court, if I might?

THE COURT: Okay. Yes, because I had a question on that too. I want to know whether -- just think about this, if there is going to be supplemental briefs necessary.

MR. SPECTOR: Well, that's the situation I wanted to raise with the Court.

THE COURT: Okay.

MR. SPECTOR: As you know and as contained in the pleadings that have already been filed, after the initial motion to dismiss was filed -- or right before I believe, guilty pleas were entered in the case that had not been -- in addition to what had already been, I think it was the Takata guilty plea, and that did two things, it added another guilty plea and it extended the class period because the Takata plea went back several more years.

The question we then had was whether we should at that point file a consolidated -- second consolidated-amended complaint, seek permission to do that, and therefore basically disrupt the briefing schedule that was already in place or continue using as was done judicial -- a request for judicial notice of the plea and the information contained in it for purposes of the briefing and argument and getting all of the facts before the Court.

It has now been fully briefed, scheduled for argument June 4th. We are prepared, if Your Honor would want it to be this way, to file a second consolidated-amended complaint within two weeks of this hearing. If the defendants want to then file something to dismiss that complaint on whatever additional issues are contained in it based on that guilty plea and extend the class period, they could do that and we could have a briefing schedule that would conclude by mid May and still maintain the June 4th hearing date, and I would suggest that to the Court. We are prepared to file our second consolidated-amended complaint by March 1st and would suggest that 30 days would be ample time for the defendants to address any new issues that are contained therein.

THE COURT: Okay.

MR. SPECTOR: We could then reply in 30 days, or even a little less, they could have a reply to our answer

within 14 days and we would still be in early to mid May at the latest.

THE COURT: Okay. We have any -- there's two of you coming up.

MS. TREFEZ: Hi. I'm Katie Trefz on behalf of Takata. And, you know, we -- the plea was entered -- or the plea was announced in -- on October 9th, 2013, which was a couple weeks before our motions to dismiss were filed. And I just -- I would also just like to note that this proposal for this timing and the proposed amendment hasn't been raised with us so far. So I think our initial reaction would be that without having seen the amendment is that it should come sort of after the motions to dismiss are decided, but -- so that all that briefing, you know, won't have gone to waste and it is a little bit -- I think -- it is a little bit frustrating for us that this wasn't raised at any time in the past several months including the last status conference if this is what they were planning to do.

THE COURT: Why not, why wasn't it raised?

MR. SPECTOR: Your Honor, I think first of all we hadn't decided that that was the way to approach it. Secondly, we had a briefing schedule and the problem we had was how are we going to deal with the briefing -- without disrupting the briefing, was it necessary to disrupt the briefing schedule at this point? Our conclusion was that it

was not because, first of all, the defendants raised it in their pleadings, we then responded to it in our pleadings, and they replied to it in their pleadings. So the only thing that this really does, quite candidly, is almost a housekeeping matter of making the complaint meet what we already know are the facts that occurred afterwards.

And one other thing, Your Honor, this would be all of the class plaintiffs, there would be three new second consolidated-amended complaints all filed in that period of time to reflect the information that has really already been presented to the Court.

THE COURT: All right. I'm not doing this twice so we are going to do it at one time. You may amend your complaint to -- I mean, it is already known and argued. I don't know what other -- what else you are going to do.

MS. TRAFZ: Yeah, I mean, I just don't know what else they are going to add, and obviously we haven't had a chance to discuss it with other defendants because he's just raising it now.

THE COURT: So let's just clean it up now then. You will have your two weeks to file your amended -- second consolidated-amended complaint and then 30 days thereafter for the defendant to file a motion, so that would be like the beginning of April.

MR. SPECTOR: I believe so, Your Honor. If we file

by March 1st, they can file by April 1st, we can file a reply by April 30th -- or an answer by April 30th and they can file a reply by May 15th and we are still three weeks before the hearing, if that's acceptable to the Court?

THE COURT: All right. The Court will follow that schedule. Please prepare an order to that effect.

MR. SPECTOR: Thank you, Your Honor.

THE COURT: All right. How about -- this is just the same thing, the anti-vibration rubber parts regarding the depositions.

MS. ROMANENKO: Your Honor, we have got a stipulation as --

THE COURT: Your appearance, please.

MS. ROMANENKO: Victoria Romanenko with Cuneo, Gilbert & LaDuca for the dealership plaintiffs.

I just wanted to announce, as Your Honor already knows, the dealership plaintiffs and the end-payer plaintiffs have a stipulation with regard to the deposition of one of the incarcerated individuals in the anti-vibration rubber parts case, and that's Hiroshi Yoshida. Your Honor entered that order I believe a few months back.

THE COURT: Okay. Thank you.

MR. SQUERI: Your Honor, if I could speak to that for a moment?

THE COURT: Yes.

MR. SQUERI: Your Honor, Steven Squeri, and I'm speaking here now on behalf of Mr. Yoshida, the individual that Ms. Romanenko just referred to.

As part of that order and stipulation that was agreed to by the parties, it also calls for the dismissal of the claims against Mr. Yoshida without prejudice. He was one of the few people that were named individually in these complaints.

THE COURT: Thank you.

MR. REISS: Good morning, Your Honor. Will Reiss from Robins Kaplan on behalf of the end payers.

Just with respect to the stipulation of Mr. Yoshida, because the end-payer plaintiffs did not actually file an action naming Mr. Yoshida, we have a stipulation but the stipulation wasn't actually filed with the Court because the Court has no jurisdiction over that claim but we do, in fact, have a stipulation for the same.

THE COURT: Okay. Thank you. I think the next item, B(8), is simply the other actions so we are up to, as I understand it, 28 parts now. I know the auto dealers just filed a number of cases this week, two parts that already existed, I don't remember the part even.

MS. SALZMAN: This is Hollis Salzman. I don't know if you are asking for verification that there are 28 --

THE COURT: Yeah.

MS. SALZMAN: But there are 28 end-payer plaintiffs.

THE COURT: All right. What do we know about -- do you have something that you want to say, Counsel?

MS. ROMANENKO: Your Honor, we have a list of the new parts with regard to which we filed complaints on Friday and they are --

THE COURT: Say that again.

MS. ROMANENKO: We have a list of the newly-filed cases. I can either read them off or our liaison counsel can deliver the list?

THE COURT: You are talking about for the auto dealers?

MS. ROMANENKO: For the auto dealers, yes.

THE COURT: Yes. No, you don't have to read them, we know they have been added. I don't think anything else needs to be done on that. Thank you.

And just out of curiosity, is anybody here for the Government?

(No response.)

THE COURT: No. I'm curious as to other parts. Nobody knows that now. Okay. We hear all kind of rumors, you know.

MR. FINK: Please spread those rumors, Your Honor.

THE COURT: Okay. Let's get to the administrative

matters now. The next status conference will be June 4th. The time was left blank. We have been meeting at 11:00. I don't know if that continues to suit you or if you want some other time. Everybody okay with 11:00?

(No response.)

THE COURT: Okay. You are shaking your head. Okay. We will have 11:00 on June 4th.

We need to schedule the next status conference, will probably be in October, I was looking at October 8th. Is there any comments on the October dates?

MR. FINK: That's my wife's birthday.

THE COURT: Well, bring her in. I'm sure she will enjoy it. Okay. Let's plan then for October 8th. October 8th is a Wednesday.

Now, I have got scheduling of interim conferences and, again, that would be as-needed, for instance on that settlement that we have talked about, we should have a conference but you all don't need to come in, please, only those who are part of that settlement need to be here. Okay.

The next item, we -- or I mentioned before and I just want to clarify it because I have never ever used a special master for anything so the special master thing is a little bit new to me, but I have heard some suggestions about special masters in discovery. I don't know what your experience is. I'm really throwing this out, I have no idea

if this is a good idea, a bad idea, but I would like some help from you. Right now I'm totally neutral on this subject.

MR. WILLIAMS: Good morning, again, Your Honor. Steve Williams for the end payers.

I don't know we have complete agreement on the plaintiffs' side. I think some of us have a preference of staying within the Court with the magistrate judge. In our experience a number of these cases sometimes there are special masters, sometimes there's a magistrate. I think we find when it stays within the Court it facilitates communications between the magistrate and Your Honor, and it also gives us the opportunity under the procedure the magistrate would have to promptly raise discreet disputes and get them resolved.

Certainly a number of courts have used special masters. They can be useful. They could also be certainly more expensive because they are paid by the hour, and then there is the issue of how we would select them, where they would sit, how frequently we would see them. Sometimes that can generate more work than if it stays within the Court.

THE COURT: In terms of staying within the Court, the use of a magistrate judge in a case of this size, my question is when we sit down to -- when I sat down with the magistrate judges, you know, how much time, how can she do

this, and here in our court we are actually soon to be down two magistrates, so we have a little bit of -- now, I don't know that those two magistrates will make a difference because I don't know when anything is going to come up on discovery and we may have new magistrates by then, I don't know, but there are problems that are foreseeable in the next six months with the magistrate system. I just wonder in other large cases like this how much time a magistrate judge devotes to it and how a Court accommodates it.

MR. WILLIAMS: Well --

THE COURT: If you know.

MR. WILLIAMS: This case is a little different, and we are certainly mindful of the resources. It depends on the parties and the magistrate. So taking examples from the Northern District where we stayed within the court, the magistrates would typically see us on discovery matters say every two months on discreet issues that come up that are usually after meet and confer, they are narrowed down, they are focused, you present your letter briefs, which are typically very short, you see the magistrate judge for an hour and-a-half, then you leave with your issue resolved. They are also available telephonically, but they are not devoting days and days of time because I think with the counsel in this case who are experienced in these actions we usually have our disputes fairly crystalized when they are

presented to the magistrate judge. It has not been unduly burdensome, I think, to the courts in those instances where we have done it.

We haven't had anything yet to present to the magistrate, that may change in the next few months, and perhaps when that happens that will give us an idea of whether or not this is going to become too burdensome or not, but to this point we have not had anything yet to present.

THE COURT: Okay. Good. Anybody else have any comments?

MR. SQUERI: Your Honor, Steven Squeri for the defendants.

Similar to plaintiffs, there are mixed views amongst defense counsel on the issue of whether or not we ought to try to have a special master here. I mean, one of the concerns would simply be the ability of the Court to handle whatever the volume may be of the issues that may come up.

Right now the parties are just really beginning the meet-and-confer process in discovery, so it is really difficult to predict the volume, and we are comfortable waiting and seeing but it is possible that later on down the road it may be necessary to consider a special master. The question is when the Court thinks would be the most appropriate point in time to do so.

THE COURT: I don't want to wait until the Court is sinking, that's my only --

MR. SQUERI: Understand, and I appreciate that.

THE COURT: It may not happen at all. I'm kind of loath to give up any of my work. Okay. Thank you.

MR. BARRETT: May it please the Court, I'm Don Barrett for the auto dealers.

The auto dealers would prefer that we have a special master appointed. I was lead counsel for the plaintiffs in the welding fume litigation, and Judge Kat O'Malley.

THE COURT: The Wellbutrin --

MR. BARRETT: No, ma'am. The welding fume litigation over in Cleveland, Judge O'Malley. And Judge O'Malley appointed a special master for discovery matters, and it was wonderful really for both sides. The issue is accessibility. I mean, sure, we are paying somebody but if you are in a deposition the special master is reachable right then as to whether a question is going to be answered or not, and it saves the months of getting a motion ready, a motion to compel ready, you hash it out, get on the telephone with the special master and hash it out and pretty much that resolves it. We found it in that particular case, of course, you have to have a qualified special master, but assuming that you have a qualified special master it really

makes the litigation go so much easier and smoother for all the parties. Thank you.

THE COURT: Do you appeal the special master's ruling?

MR. BARRETT: Yes, ma'am, you appealed it directly to the Court, to Your Honor, and after one or two appeals there were no more appeals because the Court pretty much adopted the ruling of the special master.

THE COURT: I suppose as to with counsel it would be the quality and character of the special master that would determine --

MR. BARRETT: Of course, and there are special -- there is a group of so-called special master specialists, they have a newsletter, I mean, it is a national thing that perhaps they can be invited to make applications with Your Honor and the Court could choose one.

THE COURT: Are they also specialized in electronic discovery? I foresee in this that this is going to be an electronic discovery nightmare, you know, to come with the terms that have to be determined, the search terms, et cetera.

MR. BARRETT: I think they best be. I think that the way the courts that I have been involved in lately require that both sides have a retained third-party vendor expert that speaks the language and generally speaking the

two of them get together and work it out. The wonderful thing about it is neither the plaintiffs' lawyers nor the defendants' lawyers understand it so they rely on the experts, at least for now.

Thank you, Your Honor.

MR. SQUERI: Your Honor, one point that we would like to add is that if the Court thinks that a special master is appropriate, what we would recommend is that the Court direct the parties to sit down together to come up with a process for selecting a special master and also some agreement as to how the costs of that special master will be shared.

THE COURT: Exactly. I think there is a lot that would have to be worked out and agreed to amongst the parties. I mean, the cost is one thing and I know it would be costly, although as I look at the expenses so far, plaintiffs in this case, it probably would be a drop in the bucket. That's -- I mean, my thing was why spend more money but then again given the volume in this case if this keeps going up and given the expenses that have already been incurred, it really is not going to be significant in total I would think. Okay.

MR. HANSEL: Your Honor, Greg Hansel, again for the direct purchasers.

We have also discussed amongst ourselves the

question of a possible special master, and in our view discovery disputes tend to melt away the closer they are brought to an Article III judge. You know, when lawyers are sitting in their offices firing off e-mails or letters to each other a lot of discovery disputes arise. When they are forced to sit down or talk on the telephone some of them go away, when they sit down in person more of them go away. When they have to approach the Court through a magistrate they start to see the unreasonableness of some of their positions and more of those disputes are resolved and remaining ones are narrowed. And finally when they reach an Article III judge you really get down to the hardest ones, the closest ones, the most difficult to resolve.

So for the direct purchasers, Your Honor, we believe Your Honor has been well in control of this litigation. If the Court feels that it needs assistance or may need assistance in the future I believe it was at the first hearing in this matter Your Honor introduced all -- those of us who didn't know her already, to U.S. Magistrate Judge Majzoub, and I understand she is still serving and --

THE COURT: She is.

MR. HANSEL: -- may be available and is assigned to this case, so respectfully, the direct purchasers would prefer to keep it within the court.

THE COURT: Okay.

MR. HANSEL: Thank you, Your Honor.

THE COURT: Well, it appears to me that what you are saying is that this case is no different than any other case, which means that the closer it gets to the judge the faster these discovery disputes go away. Of course, the magistrate judge and I are a lot cheaper than a special master.

So, you know, I'm not ready to appoint a special master at this time. I appreciate what all of you have said and I'm going to take that into consideration. I think we will continue, we will use the magistrate judge and see how it goes between her and I, and then if you know, if it doesn't, if it is taking too long, I mean, that's my biggest thing because I don't want this case -- it is dragging on already and I guess it is going to drag on just by the nature of the case, and if it is taking too long and we need to move it along then we will go with the special master. Don't discount the special master, keep in mind how you would select one because you would be the one selecting the special master, the discovery master.

And I would -- since it has been raised here about the electronic discovery I'm assuming you all have your own experts already, maybe I'm wrong, but at least in-house within the defendants I'm sure you have individuals who are experts in this area, plaintiffs, of course, maybe not so

much, but, you know, you really need to have one. If we get into electronic discovery disputes then it may be we are going to be having a court-appointed electronic-discovery expert. I don't know whether -- I guess you wouldn't call that person a master, but I want you to be on top of this, be ready to handle those, and I know with all of your experiences that you've had to have dealt with this before, and I just, you know, I just want to acknowledge your expertise and make sure that you be prepared to use it in this case.

I'm a little concerned about when we get to the discovery about coordination of the discovery, and it is like you will have to amongst yourself administer this discovery so that -- almost so that everybody knows what everybody else is doing from each part. Now, I'm not saying you get the discovery from each part but in terms of what is being requested, because I think we have talked about this before, we don't want duplication of discovery and we will get into that more when we get into that discovery order.

Okay. Schedule for motions on parts where service has been completed. I brought up before that I thought there were ten because I just did a quick rough count of parts where all parties have been served, which means that it is going to be appropriate to have motions pretty soon. I'm concerned with having ten parts or more have motions all at

one time because these motions become overwhelming. Even though you may say I ruled this way once or twice, we still have to read and we do go through all of this, and it is a lot of work, so I am concerned about that. I don't know if anybody has any idea about how to stagger these motions. Counsel?

MR. REISS: Your Honor, Will Reiss, again on behalf of the end-payer plaintiffs.

I just want to preface it by saying we haven't had an opportunity to speak with the other plaintiffs groups, I think it would obviously behoove us to coordinate with them, but in talking about it our initial thought is thus far we have done things in tranches in terms of when the cases were filed, trying to bring several cases together and attack them that way and negotiate case-management orders with the defendants, and I think the next logical place, at least from our perspective, is there were about six cases that were filed right around the same time up through the automotive lighting case, and so our thought process would be that we would start to negotiate case-management orders with the defendants for those cases and we would, of course, coordinate -- I don't think the directs are parties in all of those cases?

THE COURT: Right.

MR. REISS: I believe the dealers are and, again,

we would need to coordinate, but the idea would be to speak with the defendants, determine a time to file a consolidated-amended complaint and then propose a briefing schedule and, again, we would propose to begin those discussions and hopefully have something proposed to you in the next few weeks.

THE COURT: Okay. Good. That would be very good. Thank you. All right. I will wait to see what that is. It is just I don't want to have a bunch of motions and then they all are delayed six months or nine months because I can't -- we can't get them written in that period of time, so a schedule would be good.

All right. Unpublished case law used in briefs. We have been getting stacks of the unpublished case law and it is all very nice, thank you very much for printing those out, but in order to save some trees and actually it is easier if, in fact, the unpublished case law is on West Law, West Law, you do not have to include it, okay, because we can just as easily look it up. If it is not published then obviously you will have to submit it. Okay. Everybody understands that?

Use of stipulations. This is Molly and I trying to figure this out. There may be some things that are extremely similar as the various parts come through and the motions so that you know how I would rule because I've ruled on it

before. As I said, you know, I certainly could be wrong, I have been wrong, but at least I'm consistent, so you can count -- hopefully count on that. So I don't know if there are any of those situations coming up where when, say, defendants are briefing and they say oh, well, she ruled on this issue before, that you can either adopt the argument before or somehow stipulate to it to preserve your right to appeal but yet not have to go through doing all of the briefing.

Am I confusing you? You understand what I'm saying? I tried to think of things, I mean, could we say we have got 15 issues that come up, number them 1, 2, 3, 4, and can you then say you agree or disagree or you just preserve your right to appeal? I don't know. Counsel?

MR. DAMRELL: Your Honor, Frank Damrell for the end-payer plaintiffs.

We discussed that among ourselves, this particular item, and we have a suggestion.

THE COURT: Good.

MR. DAMRELL: It might be helpful to borrow from some other districts that have dealt with these issues somewhat -- not exactly the same because you have multiple complaints, multiple motions you are going to be faced with, and different parts as opposed to the same part. It would seem that it might be well to consider the technique, for

example, that the Southern District of New York has adopted for complex litigation, not dealing with this precise issue but dealing with motions to dismiss, and the possibility that we could have a conference pre-motion so that the parties could at least understand are there issues that would be raised in the motion that have been ruled upon by the Court or that could be affected by prior rulings of the Court. And then we could submit to the Court what we believe it to be, either party could say you make the submission but none of the other, so the Court would understand what this motion contains in terms of its effect on prior rulings or the effect of prior rulings on the motions. I'm sure there is going to be quite a dispute on that but on the other hand if we had a process that would allow us to anticipate that type of an issue in a motion I think it would simplify matters. There are other techniques such as waiving oral argument if it involves an issue that the Court has already ruled upon or feels it ruled upon there is no oral argument, just submit it on the papers, you reduce pagination. There is also a technique that is used quite often on issues that have been previously ruled upon by the Court so that the focus is now on issues that have not been ruled upon that is the subject of a motion to dismiss.

In any event, I would suggest, Your Honor, that perhaps what we could do is to meet and confer, discuss it

amongst ourselves, both sides, and see if we can't come up with a procedure that might be acceptable. If we don't come up with a procedure that is acceptable to all parties we would submit our own suggestion to the Court and have an interim conference on just this issue. You're faced with 25 more motions to dismiss and it will be overwhelmed unless we streamline that process, and I think we are all capable of doing that in assisting the Court in that regard.

So I would suggest, as I said, meet and confer with defendants and plaintiffs regarding this specific issue and if we can't agree to submit at least our proposals to the Court for you to consider at a subsequent interim conference hopefully prior to the June status conference. It could be done telephonically, it could be done in person, but I think it is so critical because to proceed with the idea that nothing has ever happened before and this is a brand-new motion makes no sense and that's not the idea of an MDL. We are here to help the Court, to reduce the burden on the Court, and I think we need to do this quickly, so hopefully we can meet and confer, make our submissions to you and then have an interim conference on it.

THE COURT: Okay. Any other comment on that?

(No response.)

THE COURT: I think that that's an excellent idea. Let's talk about who is going to meet and confer. I mean,

you will have to determine that amongst yourself. It should be a small group. We don't need everybody meeting and conferring, and maybe you could even be in charge of that, Mr. Damrell? With your experience --

MR. DAMRELL: If we can meet and confer within 30 days and in the following 30 days you could have an interim conference on this subject, I think that's kind of the time frame, so we can have this resolved hopefully by April before the June conference.

THE COURT: All right. Any other comment?

(No response.)

THE COURT: Okay. All right. You will take care of getting the ball rolling in that respect?

MR. DAMRELL: I will do so, Your Honor.

THE COURT: Thank you very much.

All right. Now we go into I think the next item is Fujikura's motion to dismiss Ford Motor Company.

The question that Molly raises is whether we want to have a hearing or at least a telephone conference in 60 days to see where we are at with that. Actually what I would like is kind of an update in 30 days as to what it is that you have accomplished to date in your meet and confer, let's do that by telephone conference of a small group of you, a representative group, and then we will discuss where we go from there. Is that fair? Okay.

All right. Does anybody else have any --

UNIDENTIFIED ATTORNEY: I'm the Fujikura --

THE COURT: Before we get to that, is there anything else administratively that anybody has to raise?

(No response.)

THE COURT: Is there anything else that the --

MS. SALZMAN: Your Honor, Hollis Salzman.

I do know that most of the plaintiffs, but I haven't discussed it with the defendants, would request if Your Honor was open at some point -- our hearing started at 11:00 a.m. and we are not sure the genesis of how we moved to 11:00, but if Your Honor was open to entertaining maybe starting a little earlier because I think most of the counsel do come in the night before and by moving it even slightly earlier it would allow us easier access to getting out that same day?

THE COURT: Okay. We had this discussion before, we were meeting at 10:00, which I don't care, it is fine, I can start --

MS. FISCHER: That's fine with wire harness --

THE COURT: I can start at 9:00 but no earlier than 9:00. It is what?

MS. FISCHER: It is fine with the wire harness defendants.

THE COURT: To start at 10:00?

MR. FINK: The direct plaintiffs are okay with that. We were the ones that originally raised the issue initially. It is more convenient, but 10:00 is fine for us.

THE COURT: Okay. So that's better. Let's go back to what we discussed before, that June 4th meeting will be at 10:00, not at 11:00. Okay. Very good. Anything else?

(No response.)

THE COURT: Okay. Now we have our first motion, which is the Fujikura's motion.

MR. COOPER: Good afternoon, Your Honor. James Cooper from Arnold & Porter on behalf of the Fujikura defendants.

I'm mindful of the discussion that we just had, and I think the Court has raised that issue previously. We have fully briefed Fujikura's motion to dismiss Ford's lawsuit brought as individually against Fujikura, and I don't want to delay things too much but there are a couple things that I think are worth covering this afternoon.

THE COURT: Okay.

MR. COOPER: The basic issue in front of the Court presented by the motion is how far afield of the guilty plea can an individual plaintiff push. In this particular case, as Your Honor knows, we have had a lot of prior discussion about the guilty pleas. Fujikura's guilty plea was with respect to Subaru. There was -- not with respect to the

entire wire harness market, which would differentiate it from the Carrier case which I think is kind of an important guidepost here as the Court is looking at the motion. In Carrier the European investigations were as to the whole market and that became relevant when Carrier was explaining the relevance of the European pleas to the United States, and I will come back to that.

Certainly the fact that we only pled with respect to Subaru doesn't stop Ford, and we are not arguing that that stops Ford from using that in its allegation and using that to support its claim, but at the same time it has to relate in a specific plausible way the allegations in the complaint to conduct targeted against Ford.

With regard to the relationship between Fujikura and Ford, as the Court is aware from the papers, there isn't one essentially other than one bid. Ford has never --

THE COURT: That's why you are sued?

MR. COOPER: Well, Your Honor, I asked that same question but I haven't gotten an answer. Ford has never purchased anything from Fujikura, it is not a direct purchaser from Fujikura. I think Ford's allegation is it purchases from other people and it is alleging that those other people must have conspired with Fujikura, but it has no relationship with the exception of one bid that I'm going to come --

THE COURT: There is no direct except for the first-round bid, no direct relationship?

MR. COOPER: There is no relationship at all except for one bid that didn't get past the first round and furthermore in which Fujikura provided its cost information to Ford, which is -- maybe typical in certain auto parts bids but is not typical actually if you review the case law, it is not something that typically happens in or facts that you typically have in antitrust cases.

So the one bid related to the one Ford supply contract was in 2009, although Ford alleges conspiracy beginning in 2000, and by the way, Fujikura's plea is only back to 2006, so there are six years with no support from the plea and there are nine years with no support from any contact.

THE COURT: But the dates in the plea do not limit the dates in the civil action?

MR. COOPER: Right, that's the argument we keep having. Is the plea -- the plea is not a limit, it doesn't require that you can't allege something more, but then you have to come forward with something that connects -- they have got to say we are not limited by the plea but here is what we have got, we have got something else, that's fine, and then we can't stand on the plea and say no, that's impossible, DOJ or JFTC or whoever looked into this, so they

have to come forward with something else, and they haven't done that in this complaint.

With respect to the -- with respect to that, there essentially are no other non-conclusory allegations about Fujikura's conduct. They allege that Fujikura was priced -- that its bid was too high, which, you know, obviously we don't dispute, they didn't accept the bid, they had presumably lower bidders although they don't allege that they had lower bidders. They also don't allege who won the bid. Presumably, if their theory is correct, that there was a conspiracy with respect to this bid for this CD4 it would be to benefit a member of the conspiracy, but they don't allege who won the bid or whether the winner of the bid was part of the conspiracy they are alleging. That's obviously something they know and they don't allege anything about pricing with respect to the bids, that's obviously something they know. They have Fujikura's cost data, they don't allege anything about how -- why they think the bid was a product of the -- how they know now that the bid was a product of the conspiracy when they have the cost data.

Ford also knows, and these are the kinds of facts that were alleged by Carrier in the Carrier case, they also know what do they pay for wire harnesses outside of the CD4 bid and how do those prices relate. Is that some -- if the prices are much higher in the CD4 bid then maybe there is an

argument that there is -- that might be some evidence to push the complaint towards plausibility. They know what they paid for wire harnesses outside of the conspiracy that they are alleging, in other words, before or after the conspiracy or in other markets where they are not alleging a conspiracy.

THE COURT: You raised the CD4, it is your argument that -- not that it should be at all but that if it is it should be related only to the CD4 platform?

MR. COOPER: In the papers, Your Honor, what we say is that -- we obviously believe that the complaint should be dismissed in its entirety.

THE COURT: Right.

MR. COOPER: However, if the Court is not inclined to do that then there is no basis to extend the case beyond the question of the CD4. And that's -- that's something that is very discreet, and if Your Honor is inclined to let the case go forward that's something that is you know, that's something we can bite off and chew, and that's what Judge Altonaga did in Florida Cement was that it was pretty much the same idea. In that case the plaintiffs had alleged a conspiracy in the cement business and a conspiracy in the concrete business, and she said -- in the first round of motions she said well, the allegations don't support cement so let's take that out, and then she looked at concrete and said the allegations support only with respect to a

particular time period and a particular set of business activities so let's chew that, let's bite that off, we will have discovery on that and we will move the case forward. And we were able to efficiently move that case forward and it ended up resolving.

We don't think that Your Honor needs to do that here. We think the complaint should be dismissed in its entirety, but if you are not going to do that then we believe that it should be limited to the CD4, and we will have discovery, we will move forward.

THE COURT: Okay.

MR. COOPER: Thank you, Your Honor.

THE COURT: Response?

MR. TORRES: Good morning, Your Honor. May it please the Court, Hector Torres for Ford.

Your Honor, this motion should be denied for two reasons. The first reason is that it is largely a rehash of arguments that the Court has already heard and issued its decision on June 13th of 2013. The other reason is that it is premised on a series of legal arguments that have been rejected by the 6th Circuit.

With respect to the first issue, the allegations that Ford has made here are not limited to the CD4. The allegations --

THE COURT: How do you expand that beyond the CD4?

MR. TORRES: The allegations are that there was a conspiracy involving Fujikura, an admitted co-conspirator, with Yazaki and with Sumitomo and others that expand -- that was in effect in a period of ten years, from January 2000 up through February of 2010. During that time period when the cartel was in effect Ford purchased billions of dollars in wire harnesses from Fujikura's co-conspirators. Basic principles of joint and several liability in antitrust law provide that it is not our obligation to desegregate the liability that Fujikura has because they are jointly and severally liable with respect to the conduct of its co-conspirators during the conspiracy period.

So the focus of the argument here has been only on the CD4 but it is ignoring all of the other allegations in the complaint, which is that Ford was victimized and paid prices that were artificially inflated as a result of a cartel that was in operation for ten years.

THE COURT: Explain the basis of the cartel again. You have got Fujikura pleading guilty to --

MR. TORRES: Fujikura is pleading guilty with respect to Subaru according to the complaint, you have Yazaki and you have Furukawa pleading guilty to a conspiracy that was in effect for ten years. What the courts have held is that in connection with the plausibility analysis the standard that has to be met is whether the claims that Ford

has alleged are plausible. In other words, is it plausible that it was victimized by a cartel that was in operation for ten years that Fujikura was a part of?

THE COURT: Well, we know that Fujikura from the plea dealt with one person, one entity, the Subaru?

MR. TORRES: Correct, Your Honor.

THE COURT: Now tie them into the other.

MR. TORRES: Well, Your Honor, with respect to the plea agreement, what the courts have said is that -- and what this Court held in the June 2013 decision was that once you establish that a member is a part of a conspiracy you are not bound by the guilty plea. So to the extent that their guilty plea was limited to the Subaru, the guilty plea as this Court has held and 6th Circuit has held in the Carrier decision.

THE COURT: I don't think there is any question I have ruled they are not bound by the guilty plea, but tell me what else connects it.

MR. TORRES: Well, Your Honor, what connects it is they admitted they were allocating customers, they were fixing prices, they were bidding -- they were bidding -- rigging the bids in connection with the sale of wire harness.

THE COURT: Who admitted they were allocating customers, was that the Fujikura plea?

MR. TORRES: Yes, that's in the plea. Your Honor, I have a slide that I can show you. Do you have the -- may

it please the Court, may I?

THE COURT: Do you have another copy for my clerk?

MR. TORRES: Yes, Your Honor. We turn to three, this is basically a recitation of the guilty pleas in the investigations, and you will see that the first one refers to the Fujikura plea, the time period that it pled guilty, January 2006 through February 2010. Furukawa, the same -- the longer period from January 2000 through January 2010. And the Yazaki plea during that same period.

In the guilty pleas the -- what they are pleading guilty to are three things, that there was allocation of the market, that they were fixing prices and that they were rigging the bids, and that's exactly the conduct that is alleged with respect to Ford because Ford was in the market and was purchasing wire harnesses from the co-conspirators during that entire time period.

The argument that we had to be the primary target of the --

THE COURT: Just a minute. The DOJ didn't connect Ford or Fujikura to -- wait a minute, didn't connect to an American OEM, right, until the ignition coil?

MR. TORRES: Your Honor, the guilty pleas do not refer to an American OEM. Their evidence with respect to what DOJ did or did not do does not bind or dictate what the contours are of the complaint. Your Honor is correct that

the guilty pleas did not make any reference to an American OEM. Their evidence that Ford was not impacted is essentially a press release which is -- should be accorded even less weight than other documents, or if the Court even takes judicial notice of it, because a press release just refers to the investigation that was conducted by the DOJ and reflects the guilty pleas that they negotiated but the courts in the 6th Circuit have been very clear that a complaint in a civil case is not constrained, cannot be controlled, cannot be limited by the terms of a guilty plea.

In fact, the 6th Circuit has also --

THE COURT: For a press release.

MR. TORRES: On a press release, and there's actually two arguments in response to that. Number one is that the press release itself is just reflecting these guilty pleas and the Government's investigation, which itself in Your Honor's decision in June referred to the fact that there could be a million reasons why the Government conducts an investigation, stops an investigation at a certain point, but that certainly does not limit a civil plaintiff.

And the second point is simply that if you were to accept the truth of a statement like the press release that is advanced here by Fujikura, essentially you would be depriving Ford the benefit at the pleading stage that the Court is required to accept the factual allegations as true.

You would be accepting an unsworn statement from out of court to refute at the pleading stage a well-pleaded allegation with respect to Ford being impacted by the cartel's conduct.

THE COURT: Okay.

MR. TORRES: Your Honor, if I could just address quickly a couple of other arguments that were raised?

This direct targeting argument also -- in your decision you essentially addressed it with respect to allegations that refer to a cartel that is in operation and affects the market prices over the time period that a cartel is in operation, and there was no requirement according to the allegations in the complaint that there be a direct link between the conduct of the conspirator and a specific purchaser. That was clear that they were operating, they artificially inflated the price of the wire harnesses, they control more than 88 percent of the market, they were controlling it for more than a decade, they were dictating the price in the market and Ford was in that market. Ford purchased in that market, Ford was harmed in that market.

THE COURT: So Ford was harmed just even as -- not as a direct target but the fact that it was in the market as part of it?

MR. TORRES: Exactly, Your Honor. The other argument that Ford did not purchase and somehow that's relevant to a motion to dismiss should also be rejected. It

flies in the face of the 6th Circuit's decision in Chattanooga that made very clear that the absence of purchases from an antitrust defendant is irrelevant as long as the plaintiff can establish that it made purchases from a co-conspirator, a non-defendant co-conspirator. That was a 6th Circuit decision, and it has been the law in the 6th Circuit for a long time.

One of the principal cases that Fujikura's counsel relies on in their briefs is the Iowa Ready-Mix Concrete case, Your Honor has already dealt with that case in terms of the plausibility of the allegations there. If you recall, that's the case where there was an inherent quality with respect to concrete, and the plaintiffs were alleging that as a result of that inherent quality the product could only be sold in a limited geographical region and the plaintiffs were alleging a statewide conspiracy. In that case it was found that it was not plausible. That clearly is not the case here, as Your Honor found in your decision in 2013, because here you have a global market and there is no argument that there was any inherent limitation with respect to wire harnesses.

Another argument that they raise in their reply for the first time is that the complaint is somehow deficient because Ford did not explain the reason that Fujikura would submit a losing bid or that Sumitomo would decline to bid,

but that argument ignores the allegations in the complaint, which is that -- these allegations are at paragraphs 58 and 59 where Ford alleges that Fujikura agreed to submit an intentionally high bid and Sumitomo refrained from bidding on the CD4 in furtherance of the cartel's agreement to rig bids and allocate customers.

The -- they come forward with a more-plausible explanation with respect to why they submitted a high bid, but as the 6th Circuit has held in the Watson case and in the Flagstar Bank case, at the pleading stage if the plaintiff introduces sufficient facts to state a plausible claim, the fact that the defendant can come in with an alternative explanation seemingly innocuous or seemingly reasonable is not sufficient to defeat the motion for --

THE COURT: It probably only provides for --

MR. TORRES: Pardon me?

THE COURT: It only provides Twombly for plausibility, not that may be something that is more plausible.

MR. TORRES: Exactly, Your Honor, and they make the argument, and that decision, the 6th Circuit has squarely rejected it as well.

Two other -- the one decision, the Florida Cement case that was raised as a basis for trying to limit the discovery to the CD4, is completely distinguishable. That

was a case where the president -- the basis for the allegations concerning cartel conduct was based on a statement that was made by a president that was in office for a certain period of time. The allegation was made that the conspiracy started before that time. That clearly was not -- is not what we have here. Here we have a ten-year admitted conspiracy of guilty plea in the cases, completely distinguishable, and is not a basis for limiting discovery, certainly not limiting to the CD4 or limiting discovery at all. Ford is entitled to discovery for the entire period they were purchasing wire harnesses at these inflated prices.

THE COURT: Okay, thank you.

MR. TORRES: Thank you, Your Honor.

THE COURT: Mr. Cooper?

MR. COOPER: Your Honor, I will try to be very brief.

Just working backwards, Florida Cement, I was in that case. It is exactly the same situation. It is a situation where the one -- what Judge Altonaga said was the one allegation that is specific here is this allegation about the president of a particular company being at a meeting and making some comments. She said -- they had alleged there was a conspiracy going back ten years, and she said -- and they had alleged market conditions and all of this kind of generic stuff. She said that's the one concrete, so to speak,

allegation that you have, and so we are going to bite that one off, we are going to limit discovery, let's chew that and see where we are. It is exactly the same as the CD4 allegation in Ford's complaint.

With respect to -- I think counsel said you had decided all of these issues before. I don't want to --

THE COURT: Tell me what I have decided.

MR. COOPER: I don't want to tell you what you have decided, but I just want to make the point this is a different case than the direct purchaser class. Ford has individually sued Fujikura. It is -- I think what's going to happen, Your Honor, a preview of what we are going to get to when we get to class certification in the direct purchaser case.

THE COURT: I think it is too.

MR. COOPER: Ford has sort of preempted that, and this is what I was going to come to with my last point about expanding, you know, they are trying to drive their complaint through this hole created by the class cert -- or by the class decision and expand it, so counsel just said that -- told you that Ford's injury was because Ford was in the market, and that I think at the bottom line they purchased wire harnesses, we don't dispute that. They never bought them from us, they are not Subaru, but their real theory, it is not the theory that is in their complaint but their real

theory seems to be what is referred to as the umbrella theory, that, hey, we were in the market, something happened in the market, it affected us. That is not what they allege in their complaint. In their complaint they allege a cartel targeted at Ford. And they can if -- we would have legal arguments -- separate, different legal arguments about that theory if they amend their complaint and they want to allege that theory, but that's not what is in their complaint so the pitch that Ford is throwing that we have to swing at is a different allegation.

THE COURT: Okay.

MR. COOPER: Thank you, Your Honor.

THE COURT: Thank you very much. All right. The Court will issue an opinion on that.

Ready to go on to the discovery --

MR. HANSEL: Yes, Your Honor, unless the Court wants to take a break.

THE COURT: I was wondering when you want to break for lunch. I don't want a long lunch hour either.

MR. SQUERI: Let's go for a short lunch now.

THE COURT: Yeah, I think this is going to be the most time-consuming motion. Let's take -- do you think you can do it in an hour, get out and get back in? Yes. Let's try that. 12:30 to 1:30. Okay. Very good.

THE LAW CLERK: All rise. Court is in recess.

(Court recessed at 12:28 p.m.)

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(At 1:33 p.m. Court reconvenes, Court, counsel and all parties present.)

THE CASE MANAGER: All rise. The United States District Court is now in session. You may be seated.

THE COURT: Good afternoon. All right. Let's get on with the Ford motions now. Who is going to argue what?

MR. HANSEL: May it please the Court, Your Honor, Greg Hansel for the direct-purchaser plaintiffs, and I appreciate Mr. Squeri allowing me to go first. That's a good example of something I was going to talk about anyway.

The good news on the proposed supplemental discovery plan or plans is that plaintiffs and defendants have had many meet and confers and we have agreed on the vast majority of the issues, the vast majority of the language in the plan. That is important for at least three reasons. One, it is good in itself; second, walking in here this afternoon from lunch I saw the civility award plaque in the hallway so we are conducting this litigation the way Your Honor asked us to at the beginning; and, third, it bodes well for the future.

Specifically, if after this hearing the Court chooses to leave some issues for another day, such as the deadline for class certification or certain discovery

disputes that may arise in the future for the parties to try to agree in the future, there is a good chance that we will, we will be able to resolve those without the assistance of the Court.

There are four disputed issues in the supplemental discovery plan submissions by -- the primary ones, I'm now referring to the Ford issues.

THE COURT: Okay. We are talking now, you proposed in docket number 183, your joint memorandum, okay?

MR. HANSEL: Yes.

THE COURT: If we could use that as an outline of how we go through them?

MR. HANSEL: Very well. That was going to be my outline. I do have one question for Your Honor. I'm prepared to address all four issues, the whole thing, and then sit down, or if it would be easier we can go one by one so we keep our focus on the particular issue and then --

THE COURT: Let's focus on a particular issue because I would like to rule on them as we go along, if possible.

MR. HANSEL: Great. Very well.

So the first issue is the document discovery schedule. Under the plaintiffs' proposal, and, in fact, this is in both parties' proposals, the parties -- the plaintiffs must serve additional, quote, comprehensive document

requests, end of quote, by March 15th, 2014, so in about a month. And under the plaintiffs' proposal, in particular, the plaintiffs are permitted to serve additional document requests after that date. This is a plain vanilla approach to discovery under Rule 26, and we believe it is appropriate. And I want to say I am speaking on behalf of all three groups of the class plaintiffs who are referred to in the papers by the title, plaintiff groups in contrast to Ford and the Attorney General, who are referred to as individual participates, that's a defined term.

THE COURT: Okay.

MR. HANSEL: So for three reasons the plaintiffs' approach is proper. First, as in the Intel case, courts have held that broad scope of discovery is particularly appropriate in antitrust cases. Second, the DOJ stay -- the Court's order granting the Department of Justice's request for a limited temporary stay limits discovery in this case. And third, it is -- this is an international case which creates complications.

The defendants propose unprecedented restrictions and limitations by asking to limit plaintiffs to, quote, targeted, end of quote, requests for, quote, very specific and limited, end of quote, categories after March 15th, 2014. Not content with the federal rules, the defendants want to create a new burden on plaintiffs seeking discovery to

justify their discovery by making a showing of need, that there is a need for new discovery -- additional discovery from newly discovered information or new developments in the case.

Beside being unprecedented the defendants' novel approach is unnecessary. If the defendants have an objection they can make it if they have an objection to discovery. If they believe it is duplicative or it creates burden and expense out of proportion to the potential benefit they can object to the discovery requests in the ordinary course, and chances are the parties will work it out. If not, they can ask for Your Honor's assistance or as we discussed earlier perhaps Magistrate Majzoub's assistance. If it is -- in this case the defendants know the facts about the conspiracy, not the plaintiffs. The plaintiffs need normal discovery to find the truth.

The second aspect of document discovery in this first overall issue is in paragraph I(B)(3) with regard to the timing and manner of responses to requests for production. The plaintiffs propose a workable framework whereas the defendants wish to leave actual production of documents on an open-ended, indeterminate, quote, rolling basis, end of quote. The plaintiffs propose that --

THE COURT: What exactly does that rolling basis mean, does it mean when they have so many documents they will

give them to you, and then as they go along they --

MR. HANSEL: Yes, yes. And the problem we have with rolling discovery is that a party could theoretically be in compliance with it by producing something at the beginning of rolling discovery and not producing some very important documents perhaps until the very end of the rolling discovery.

THE COURT: So you are saying don't give it to me when you find it, hold it until you find everything?

MR. HANSEL: I don't --

THE COURT: Is that what you're saying??

MR. HANSEL: I don't want to put words in the defendants' mouth but --

THE COURT: What are you saying? If you don't want it rolling, are you saying don't give it to me until a particular date?

MR. HANSEL: No, we are not saying that. We are happy to receive documents anytime, but what we are saying is there should be a deadline and we propose specific what we believe to be generous deadlines. So one of them is for electronic documents, the plaintiffs propose 120 days from the requests, and for hard-copy documents the plaintiffs propose 150 days, so four months or five months depending on whether you have to process hard-copy documents.

And so to expedite and facilitate that document

production, plaintiffs also propose that within 14 days of the service of a request for production the parties should begin their negotiations about issues involving two particular areas that are classic issues that arise in document discovery in cases of this type, which are search terms, the Court mentioned that earlier, and custodians. Search terms is pretty self-explanatory, you know, what terms do the defendants have to use to search through their databases to find things that may be relevant or discoverable. And custodians may be a little less self-explanatory, but basically the defendants may say well within the breadth of your discovery request there may be 30 potential document custodians or employees who have their own e-mail accounts, but we believe that only 20 of those really had anything to do with what you are after, so would you agree that we not have to search through the other ten people's Outlook mailbox?

So what the plaintiffs are proposing -- and in a case like this it is appropriate to have some special element of process to move things along. Plaintiffs are proposing that within 14 days the parties sit down or talk on the phone and meet and confer about document custodians and search terms.

THE COURT: For documents which defendant would agree at least some of them would be in response to your

request or vice versa as opposed to -- the example that you gave, say you have 20 and they are willing to give you 10 custodians so you are really only fighting over the number of custodians but you are not fighting over the content of what you want from the custodian?

MR. HANSEL: Well, the content I guess would be under the search term category so within those custodians we could talk about what search terms --

THE COURT: What I'm thinking is you could do the search terms because you know you are going to need them because some custodians are going to be requested to give this information, right?

MR. HANSEL: That's true.

THE COURT: And the Court could determine later whether it is 10 custodians or 20 custodians?

MR. HANSEL: That's true, although I guess if you were doing the search terms you wouldn't know which custodians to run the search terms through so you sort of need to do both at the same time, and we would certainly endeavor to try to agree, as we have frequently been able to do, on both of those issues.

THE COURT: Okay.

MR. HANSEL: So the defendants' proposed rolling discovery means that as long as a party produces some documents at the beginning of rolling production they are not

required to produce the rest until the last day of discovery after depositions may have been taken already, after experts have started their work perhaps without the benefit of key documents. I don't want to impugn any motives to anyone but it presents a moral hazard if a party has sort of a license not to produce important documents until the last day of discovery. Incriminating documents could conceivably not be produced until the end, and that's not in the spirit of discovery under the federal rules, so that's why the plaintiffs suggest a deadline. That's my presentation on the first issue, Your Honor.

THE COURT: Okay.

MR. HANSEL: I will turn it over to Mr. Squeri.

MR. SQUERI: Thank you, Your Honor. May I approach? We just have a few very short slides to share with the Court.

THE COURT: All right.

MR. SQUERI: Your Honor, Steven Squeri for defendants Yazaki Corporation, Yazaki North America. I'm also speaking now, Your Honor, on behalf of all defendants, although with respect to one of the issues that's going to come up a little bit later Michael Rubin of Arnold & Porter will be addressing the Court.

THE COURT: Okay.

MR. SQUERI: First, I do want to agree with

Mr. Hansel's initial comment, and that is that the parties have managed to reach agreement with respect to a number of issues that required a fair amount of negotiation. We first sent to plaintiffs, Your Honor, a draft of the discovery plan back on September 19th, and the negotiation over the plan began in earnest in late November and continued until January, and we were able to resolve many issues involving interrogatories, a number of interrogatories, requests for admissions, some issues regarding depositions.

One thing I should point out, Your Honor, is that the plan does contemplate an additional document being generated, a deposition protocol, which is going to address some additional issues concerning the ways in which depositions will be conducted. None of those are at issue today. We are expecting that the meet and confers with respect to those matters are going to take place in the very near future.

Your Honor, turning to the document requests and production issues, the way defendants view this is that it is really a question of sequencing and being able to prepare the document productions in the most efficient, effective way possible and having the opportunity to present the issues to the Court in an efficient way. We agree with the basic language quoted by plaintiffs concerning the Federal Rules of Civil Procedure that the goal is, quote, to secure the just,

speedy and inexpensive determination of this action.

We also agree with plaintiffs' observations that this is a complex antitrust action, and that plaintiffs at least are seeking, you know, very -- are asserting very broad claims and seeking very broad discovery. We are not here to address those discovery issues, but there is a great deal involved here. But we would submit, Your Honor, that the complexities and realities of this case and the broad discovery that is being sought is precisely why we need a rational, orderly process for addressing how these document production issues are going to be addressed and the sequence for addressing the issues and the sequence for resolving those issues and then making the production of documents that we are ultimately required to produce, and that's precisely what we are trying to address, Your Honor, through the various provisions that we have suggested in the discovery plan.

In sum, Your Honor, what we look to do -- what the plan as drafted by defendants would do is try to first get out all of the comprehensive discovery requests from plaintiffs, then to resolve the issues, and then to begin the production of documents in accordance with a schedule that is agreed upon by the parties once we know what the scope of that production is going to be. As we address these issues, Your Honor, we think it is important to consider both the

context of where we stand and what has happened so far.

If I could refer the Court to the second slide, page 2 of the handout that I handed to the Court, this is a rough time line that the Court has of what has occurred in connection with plaintiffs' document requests directed to defendants. What you don't see there is that the initial request for production of documents were served by the end-payer plaintiffs and the direct-purchaser plaintiffs in the July/August time frame of last year. These two sets of requests included approximately 60 specifications that demanded production of an extraordinary broad range of documents concerning the business of the defendants. In many respects, Your Honor, these requests overlapped many of the same type of documents that had already been provided to plaintiffs back at the end of 2012, if Your Honor will recall.

THE COURT: We are talking about the wire harness?

MR. HANSEL: Yes, Your Honor. The defendants produced in the last quarter roughly of 2012 about 12 and-a-half million pages of documents to plaintiffs at that time. We have these new requests, which we have responded to as reflected in this time line that the Court has before you at this time, and that response was served by defendants back on October 8th and that was by agreement of the parties. Defendants made a request of plaintiffs back on November 10th

of 2013 for joint meet and confer to begin addressing those issues. That didn't happen for a variety of reasons. The first letters from plaintiffs though, and this was reflected in the agenda that was originally circulated to the Court -- submitted to the Court, I should say, the original letters from plaintiffs addressing issues on the document requests and suggesting a meet and confer came first on December 20th to some defendants and then on January 6th to other defendants including my client.

In some cases, Your Honor, plaintiffs and defendants have already begun now the process of discussing the document-request issues but in other cases those discussions have either just begun or they are about to begin, for example, the discussions involving my clients and plaintiffs are scheduled to begin next week.

Notably, Your Honor, defendants have on a number of occasions suggested to plaintiffs joint discussions for the purpose of addressing common issues. Plaintiffs have generally resisted that happening. There was one call that we were permitted to participate in which defendants -- some defendants were permitted to listen in but they could not participate in that conversation. That was plaintiffs' choice and we respected it.

What defendants though -- let me back up as well, Your Honor. I mentioned that the end-payer plaintiffs and

direct-purchaser plaintiffs have served comprehensive discovery requests, which is a defined term in the plan which both sides agreed to, but the auto-dealer plaintiffs are yet to serve any document requests on defendants. The auto-dealer plaintiffs have, however, been participating in and are expected to continue to participate in the meet-and-confer process on the document requests of the direct-purchaser and end-payer plaintiffs, which defendants welcome because all of us would like to bring closure to whatever issues might exist between the parties, but it is important to add that even as of this week we still do not know whether the auto-dealer plaintiffs will be serving their own set of comprehensive document requests upon defendants.

So where we stand right now is that we have two comprehensive document requests that would require massive collections of documents beyond the 12 plus million pages of documents that have already been provided, and they would come from the files of, just as I say, many individuals or custodians, but we don't yet know the full scope of what we are going to need to produce, and the principal reasons that we don't know, Your Honor, are twofold. I mean, first, we don't know yet whether we are going to see more in terms of comprehensive document requests, again, we haven't seen the auto dealers' document requests yet. But second, we are -- since we are just starting the meet-and-confer process and

still need to reach agreement with plaintiffs on production scope issues and possibly to have certain issues perhaps resolved by the Court, we don't know yet -- we don't yet know what the universe of documents is that we need to produce, and we need that -- this process to conclude, Your Honor, in order to begin to provide plaintiffs with the documents over and above the 12 million pages that they have already gotten.

THE COURT: You know what the end payer and direct purchasers want, you have got their comprehensive requests?

MR. SQUERI: Yes, Your Honor, we have their requests and we responded and we objected to a number of those requests. We received the first letter from them where there is disagreement as to what the scope of that production should be. We know what their requests are but we don't what the outcome is going to be of the meet and confer and what it is that we are ultimately going to need to produce to the end payers and direct-purchaser plaintiffs.

THE COURT: Give me an example of like the scope that you are talking about that you don't know?

MR. SQUERI: Certain types of documents that they might want, just as an example, trade association documents, do we need to look for trade association documents with --

THE COURT: They have asked for it and you say you object to it?

MR. SQUERI: We objected to it.

THE COURT: I get what you are saying, because of your objections you don't know the scope of what you have to --

MR. SQUERI: That's right, Your Honor, and we expect that both parties will engage in a good-faith meet-and-confer process as to what they ought to have, but until that process is completed we don't know what it is that is going to be the universe that we need to look for, and there are some real cost efficiency and burden issues if we don't have that closure and understanding before we actually begin the process of looking for these additional documents. I mean, just -- for example, there is inefficiency in the collection process that takes place. If the scope of the discovery substantially changes after we begin the document-collection process we would need to send a team back to go back and collect files from some of the same locations, we would have to hire the ESI experts, for example, that would need to assist us in gathering those documents. It is a lot more efficient if we can do it all at once, and I think it is more --

THE COURT: So your request -- let me just get this straight. You want to meet and confer first?

MR. SQUERI: Yes.

THE COURT: And plaintiffs' position -- you said you had a meeting, I don't know, or you are going to have a

meeting?

MR. SQUERI: Plaintiffs have started to meet with one of the defendants. I think there was a meet and confer about two weeks ago approximately. Our first meeting is coming up next week.

THE COURT: So you are going to have a meeting and the meet and confer, and when you have that meeting you are going to come to terms of some kind, you may object still to giving certain information?

MR. SQUERI: Yes, Your Honor.

THE COURT: Then you would have to file a motion with the Court as to whether that's appropriate. Am I following this right so far?

MR. SQUERI: That's exactly right, Your Honor.

THE COURT: And if that's the case you don't want to give any information until you have the decision on that, as I read your documents, because of the costs in duplicative effort or hiring experts, et cetera, et cetera, that would cost?

MR. SQUERI: That's exactly right, Your Honor. So what we have tried to build into the process because we -- defendants have been concerned about this because as I mentioned we served our responses back in the beginning of October, so one of the things that we suggested and that the plaintiffs agreed to, including the plan, was a deadline for

serving comprehensive document requests. The date we agreed upon was March 15th. And hope -- we also tried to build into the plan as well an agreement that the parties would complete whatever meet-and-confer process that needed to be done within 45 days and that any motions that needed to be filed would at that point have to -- any issues, I should say, that weren't resolved between the parties after their good-faith efforts to do so would need to be brought to the Court's attention within 45 days. Our intention is simply to try to move the process along. I mean, we are talking -- we are now almost two and-a-half years into this litigation, and the goal of the defendants is to be able to get the litigation moving, we want to complete the document requests but we want to do it efficiently.

And -- but one of the key provisions that Mr. -- that counsel for plaintiffs referred to during his presentation is this provision that relates to what happens after March 15th. Our proposal says March 15th should be the deadline for comprehensive discovery requests. We think that's reasonable. We think that's reasonable, two and-a-half years into the litigation, 16 months after plaintiffs had our 12 and-a-half million pages of documents.

THE COURT: Okay. And you recognize -- according to what you said in your briefs, you recognize that as a result of that discovery that you are getting there may be

more discovery, more requests that plaintiffs want. Now, you -- both sides seem to be in disagreement, one uses the term targeted and the other one says, you know, you can ask for --

MR. HANSEL: Additional --

THE COURT: Just additional whatever.

MR. SQUERI: It is unlimited.

THE COURT: Right. Okay. I'm not so sure that's that much of a dispute but go ahead.

MR. SQUERI: Your Honor, I would think that it wouldn't be and plaintiffs were willing to agree to the March 15th date but it becomes illusory if they keep the door open so that they can simply come back later on and ask for anything else. All we are asking them to do is based upon where we are in the case right now to make their best effort, and quite honestly I think the end-payer plaintiffs and the direct-purchaser plaintiffs have done that for the most part, but that we need to know that this -- these are the sets of comprehensive requests that we are going to see.

THE COURT: All right. And when you talk about a rolling production, you are talking about -- you begin giving them information after these disputes have been resolved but that you end that at -- plaintiffs' is that you give that at a particular date, so really you would roll it out up until a particular date. Is that it, you would roll out until that

date to --

MR. SQUERI: Yes, Your Honor. I mean, what we would contemplate is once we have an agreement, and our draft of the plan contemplates this, once we have a resolution of the issues we would also agree with them as to what the end date would be. It is difficult for us in good faith to come up with a meaningful end date until we know what it is that -- what the full scope is of what we are going to have to provide, but we are not looking for open-endedness but we need to have some understanding of the universe of what it is that we are going to have to do before we get to that point.

THE COURT: Okay. I'm ready to rule on this.

MR. SQUERI: Okay.

THE COURT: It seems to me that defendants are correct that they should have, and I think plaintiffs have agreed mostly to this, a comprehensive request for documents. You have agreed on that particular date of March 15th, was it?

MR. SQUERI: Yes, Your Honor.

THE COURT: So that date should stand, and plaintiffs need to do everything they can to make that request truly comprehensive so that you don't go back later and say, you know, now I need this and that, but the Court recognizes that there probably will be times when you have to come back to the defendants for further information. Okay.

I don't want to call that targeted, I don't like that word, I don't think anything is targeted. I don't see why it can't be just the normal positions. Plaintiffs asked for whatever information, maybe it would be a second comprehensive -- you know, nobody has talked about that but it could be that there would be a second comprehensive review but it has to be because you didn't know about it beforehand and that's why you didn't ask for it now, you know, there has to be some good reason, and so they can ask, and you can object, and then the Court could rule on it and I could say you knew you needed that before, that's fooling around, you don't get it; or the Court could say yeah, I see where that has come from, information you received that you would have no way of knowing.

So I think we will just follow our normal procedure, give a comprehensive -- plaintiffs give a comprehensive request, and then what happens if there are objections? I think the objections should be ruled on first, I agree with defense, I think those objections need to be resolved. After the objections then you could use -- there has to be a deadline by which you have to give all of that information. I don't have any problem with a deadline proposed by the plaintiff after the objections, it could be a rolling deadline where you do it as you go along, but you would do that -- I forget, I wrote it down here, it is four

months and five months, right, for discovery? I mean, the electronic data is four months --

MR. HANSEL: Yes, Your Honor.

THE COURT: -- and the written is five months?

I think the only -- the Court results, from what I see, the big dispute there is that the Court has to resolve or you have to resolve first the objections before these time lines start running. There was one other thing first and I've forgotten already what it was?

MR. HANSEL: Did the Court wish to address the meet and confers?

THE COURT: Yes, that's what it is, the meet and confer. Yes, I think the meet and confer needs to happen. I think you need to get together. Now, you have a March 15th date so you are going to have to get together relatively quickly.

MR. HANSEL: Yes, Your Honor. For example, if -- let's say all of the plaintiff groups serve additional final comprehensive requests on March 15th, then within 14 days of that date the parties would need to commence meeting and conferring with regards to the search terms and custodians.

THE COURT: Any problems with that?

MR. SQUERI: Yes, Your Honor. If I could, that was one issue I did not get an opportunity to address.

THE COURT: But aren't we talking a little bit

about meet and confer before this date or no?

MR. SQUERI: Yes, Your Honor. We are prepared to sit down with plaintiffs next week, we have -- actually we have a date and time already set, I can't recall exactly what it is off the top of my head but it is next week, we are going to be talking about various issues. And issues like custodians are necessarily going to be a part of it. You know, the suggestion that within 14 days after we serve our requests we should need to tell them that we are going to use custodians, I mean, that's somewhat unprecedented, I mean, you generally discuss who the custodians are when you sit down and meet and confer, but I should say even to some extent it is a moot issue at this point because they already know we are going to be using custodians, they know we need to talk about how we are going to go about retrieving and finding ESIs.

THE COURT: The question is when are you going to do that?

MR. SQUERI: We expect to do that next week.

THE COURT: Counsel?

MR. WILLIAMS: Steve Williams, Your Honor. I just wanted to clear up any misapprehension.

We are going to do it with his client next week. We have done it with most of the others, and we have the last one scheduled, so there is no issue about getting these

things scheduled and getting them done by this March 15th date. The last one I think one of the defense counsel had other things that delayed him from being able to do it but we now have a date set for that, so this is all worked out, there is no real issue about this.

THE COURT: So the meet and confers are all done or going to be done?

MR. WILLIAMS: Done or scheduled.

THE COURT: Within the next week?

MR. WILLIAMS: Within the month of February.

MR. HANSEL: Your Honor, just to be clear, that is the meet and confers that Mr. Williams is referring to that are already underway, those are with respect to discovery requests that direct-purchaser plaintiffs served back in July of 2013, and that end payers served sometime after that. So those are the existing document requests on which the defendants have responded and objected -- not produced any documents yet but they have responded and objected, then the plaintiffs sent letters in an effort to identify, you know, in the plaintiffs' view deficiencies in the defendants' responses and to begin a meet-and-confer process, and with respect to those older discovery requests the parties have now commenced a meet and confer, so there has been a little confusion, I just want to make it clear and simple.

THE COURT: Well, now I'm confused. Let me --

MR. HANSEL: Let me explain this. There is the old discovery and there is the new.

THE COURT: Wait, I understand that, but what I'm trying to do is a process here. So from your old discovery you get -- you -- could you close that door back there, please? Thank you. They are not as interested in this as we are.

You serve a request or plaintiffs serve requests for -- a comprehensive request for discovery, okay, and is your process then that you meet and confer over the requests that were filed or is it the other way around, do you meet and confer and then file your requests?

MR. HANSEL: What plaintiffs are proposing from now on, Your Honor, is that with respect to future requests for production --

THE COURT: Okay.

MR. HANSEL: -- that --

THE COURT: So now March 15th you have got this future date request?

MR. HANSEL: Correct.

THE COURT: So what happens?

MR. HANSEL: With respect to future requests to produce the plaintiffs require that the parties meet and confer commencing within 14 days --

THE COURT: After.

MR. HANSEL: -- after they are served in an effort to narrow any differences on search terms and custodians, and then that a written response to those requests for production be served in the ordinary course, which is 30 days after the service of the requests, and --

THE COURT: Okay. Let me stop you there.

MR. HANSEL: Yes.

THE COURT: It has been a long time since I've practiced so I'm really out of this. You are saying 14 days, I mean, depending upon the magnitude of your request that doesn't seem to be a lot of time. Maybe because you are so into it it is. I just want to make sure that time period is correct, but my main thing is then you get together and you talk about search terms and custodians. I wonder why don't you talk about the things that you think you are going to object to, just discuss them before they ever get to --

MR. HANSEL: Plaintiffs would be happy to discuss those also, but I guess in an effort to sort of target specific areas of known difficulty the custodians and the search terms come to mind. And as Mr. Squeri acknowledged, you know, the -- before this -- since we don't have a supplemental discovery plan yet we have just been operating under the initial discovery plan in the federal rules, so we issued discovery requests, defendants objected, we've had meet and confers and, in fact, it is important to know that

this case is not new to the defendants, the defendants have been handling the criminal cases for many years in some cases, the civil cases for two and-a-half years, the defendants in some or all cases have -- their counsel is international, sophisticated counsel and they have performed internal corporate investigations, they have identified the document custodians long since and they have reviewed documents.

THE COURT: Okay.

MR. HANSEL: So it is not new, it is not like they have to reinvent the wheel starting March 15th so --

THE COURT: So you have requests, 14 days you meet and confer on search terms and custodians, and then what's next?

MR. HANSEL: So then under the federal rules, which this -- the proposals don't alter --

THE COURT: Forget the federal rules, what are you going to do?

MR. HANSEL: There is a 30-day deadline to respond to a request for production in writing with a written response including any objections. Normally that's when the meet and confer begins, we are saying let's start the meet and confer even earlier to try to expedite it. So the next thing that happens under the plaintiffs' proposal --

THE COURT: So it is not 30 days from the meet and

confer, it is 30 days from --

MR. HANSEL: Service of the request.

THE COURT: -- service of the request?

MR. HANSEL: Yes.

THE COURT: Okay.

MR. HANSEL: And then the next thing under the plaintiffs' plan is the production of -- well, excuse me, the next thing is within 45 days after service of the request motions to compel or for protective order with regard to any unresolved objections should be filed -- must be filed by that deadline. And then we would hope and request that the Court be available, of course, to assist in resolving those issues, and then if the Court is available in sufficient time then the production -- certainly the production of documents for which there is no pending objection could easily begin within 120 days in the case of electronic and 150 days for the hard copy.

THE COURT: But that's the stumbling block there.

MR. HANSEL: But if we do have pending objection -- let's say the Court is just simply not available, you know, I would ask my colleagues, I'm not sure what's our collective position on that but I will speak for myself at the risk of being dragged off the podium. You know, if the Court simply wasn't able to reach a bona-fide discovery dispute within that 120 days then it would seem reasonable for the defendant

to withhold production as to the items subject to that dispute until the Court can make a ruling.

THE COURT: Okay. But the question I have, because I think this is what defendants' position is, is they don't want to produce anything until they have all of the objections taken care of because maybe they would have to go through all of the same documents again, same databases, whatever they are called nowadays, you know, maybe they would have to get another -- or use their expert to --

MR. HANSEL: I think the current default rule in federal discovery is that if you don't object to producing a document you have to produce that document and so plaintiffs would request that that remain the order of the day.

THE COURT: Okay. Let's hear from Mr. Squeri.

MR. SQUERI: Your Honor, a few points. Your Honor, you've just articulated our position regarding the need to not have to go back multiple times.

With respect to this issue regarding --

THE COURT: What about the federal rules that, you know, if you don't object you have to --

MR. SQUERI: Of course, Your Honor, we have asserted our objections. The problem comes when we sit down with plaintiffs and we try to work it out and if we decide as a result of those discussions, those good-faith discussions, or the Court ends up deciding otherwise we have to broaden

that search, that's what we are trying to address. We are not trying to say that if we didn't object and we missed it that we don't have to go back and look for it. I mean, I think we have to do that.

THE COURT: No, no, if you didn't object to producing certain documents they are saying you have to produce those documents within this time frame, not after you have the ones that you have objected to resolved, those objections.

MR. SQUERI: Well, Your Honor, this goes back to the whole point of efficiency. What we are saying is that we need to know what the scope is of what we are going to have to produce. We need the scope to -- we need to know what documents we are going to need to produce and what we are not. We are going to object -- we have objected, we are going to try to resolve those objections with plaintiffs, and then once we know what the scope is we go in and we review the documents and we make the production.

You know, when it comes to issues like custodians, you know, it is hard to talk about custodians until you have your response and you know what the scope is going to be of your production. It is hard to talk about, you know, search terms or other methodologies for searching for documents until you know what the substantive scope is going to be. Again, I expect we are going to have those conversations with

plaintiffs beginning next week so I don't see that there is going to be any delay in that process.

THE COURT: Okay.

MR. SQUERI: But there is one other request that I would make, Your Honor, the four-month and five-month time periods for producing documents, I assume we are talking about after issues are resolved, I think that's the way you phrased it. It is -- from my co-counsel they are cringing a bit only because of the magnitude -- the potential magnitude of that task, I mean, keeping in mind that we may be talking about foreign-language documents, et cetera, that need to be produced and given the fact that we do not know right now what the full scope is going to be, I would ask for the opportunity once we reach closure on what it is that we have to produce to be able to address that issue. We have no problem dealing with the deadline, I think that's the right way to do it, but it is very hard to commit to something like that given the magnitude and scope of the requests that have been made.

THE COURT: So you just don't know whether you can meet this deadline --

MR. SQUERI: That's right.

THE COURT: -- because you don't know what you are going to be requested?

MR. SQUERI: That's right.

THE COURT: That makes sense. Okay.

MR. RUBIN: Your Honor, Mike Rubin of Arnold & Porter for the Fujikura defendants.

I just wanted to note that we are slightly differently situated than the rest of the defendants in the class action because there is --

THE COURT: Which defendants are you with?

MR. RUBIN: Fujikura, because of Ford, and Ford's discovery may overlap with, may be different than, may have different time periods than what the class defendants are. Ford has agreed to get us comprehensive discovery requests by March 15th as well, but until we see those we are not going to be in the position to really figure out who the right custodians are to do this once because the last thing my client wants or I think this Court would want is for us to have to review one set of documents, go through a million documents, and then have to go back through them again because of Ford or because of another set of discovery from the class plaintiffs. So as the Court considers this we would ask that you keep in mind that the Fujikura defendants, or at least until your motion to dismiss ruling, are differently situated.

THE COURT: Any comments on Fujikura? Do you agree they are different to some extent?

(No response.)

THE COURT: Okay. All right. You are going to have the meet and confers, those will take place within 14 days after the requests are served, then you will have 30 days for your written responses and 45 days for your motion to compel or to have any of your objections or anything that you might have to have it resolved, and then we will go with the four months and five months to start at that point.

Now, it might not be enough but we don't know that now. I mean, I don't want to drag this out indefinitely. If it is not enough then you come in with good reason why it is not enough time and we will look at it then. Okay. So we will exclude Fujikura at this time from this until this Ford-Fujikura thing is resolved.

Now, does that take care of that first part? You know it so you can put it into an order?

MR. HANSEL: Yes, Your Honor.

MR. SQUERI: Yes, I believe it does, Your Honor. Thank you.

Your Honor, one of the next issues that -- the next issue to address relates to class certification scheduling.

MR. HANSEL: I think it is Rule 502.

MR. SQUERI: I'm going defer to Mike Rubin on that, he's going to take over.

THE COURT: Okay. Mr. Rubin?

MR. RUBIN: Thank you, Your Honor. This is, I think, a fairly narrow dispute between the parties. It relates to -- we have agreed on all the language except at the very end of our 502(D) clause. The plaintiffs want to exempt out from those protections everybody who has a case in the auto parts MDL other than the wire harness parties. So they are creating a universe in which the wire harness parties are bound by this agreement because they have agreed to, anybody outside of auto parts MDL are bound by -- or cannot come in and argue waiver, but all of the other plaintiffs in all the other auto parts cases can come in and say because you used paralegals to review documents you have waived privilege.

Let me take a step back and discuss why this provision is so important. As Mr. Squeri noted, one of the big challenges in this case is going to be the amount of foreign language, in particular Japanese language documents the defendants are going to have to collect, process and then have somebody look at and review. With the assistance of search terms, sure, but ultimately somebody has to look at those and make judgments on them. There's obviously a lot of Japanese investigations going on. Japanese language skills are limited to begin with. Getting U.S. barred attorneys that are bilingual in both Japanese and English is very difficult to have.

We -- recognizing that, recognizing the risk of delay that would cause, we approached the plaintiffs and they agreed that they would not argue that because we used paralegals or other non-U.S. barred attorneys to review those Japanese documents that somehow we didn't take sufficient care to protect the privilege, and thus a document that slipped through, it wasn't an inadvertent production but it was an intentional production because we were too sloppy.

There has been some case law, I think it is bad case law, but there's some out there where plaintiffs have argued that. So to be careful to allow us to have the comfort to expedite the process we asked the plaintiffs to agree to this, they agreed, but as Rule 502(D) and the comments to it note, that's very little protection when other parties who are not a party to that agreement can come in and say well, you waived with respect to me even though the plaintiffs in the wire harness case decided not to argue that but I get to still argue waiver.

That's where 502(D) comes in. We propose language that would allow the defendants with comfort to know that nobody is going to come in later and say because you were trying to be efficient, because you were dealing with a massive amount of discovery in a foreign language where there is just not enough U.S.-barred attorneys to deal with it you have now waived privilege.

THE COURT: So basically what you want is all of these people who are going to be looking at it who are non-lawyers are to be treated like lawyers in the sense that this would all be privileged?

MR. RUBIN: Yes, and the wire harness plaintiffs have agreed to that. The difference in our language solely is that somebody who is not a plaintiff in this MDL they could not come in and argue waiver, someone who is a party to the wire harness case could not argue waiver, but someone in instrument panels or windshield wipers they could argue waiver, which is in our view, an absurd sort of outcome. I'm not sure if that's really what the plaintiffs intend but that's what their language creates by adding in at the end to the 502(D) language where they agree that no one else -- there will not be waiver in any other federal or state proceeding other than In Re: Auto Part Antitrust Litigation. That language creates that doughnut hole, so to speak, and that's what we would object to, and we would ask the Court to adopt our language instead in the interest of efficiency.

THE COURT: Okay.

MR. RUBIN: Thank you.

MR. HANSEL: Greg Hansel again for the wire harness plaintiffs.

THE COURT: What are you saying?

MR. HANSEL: What are we saying?

THE COURT: Yes. What is your position? You agree it is waiver, it is not waivable because they are using paralegals or whoever, right?

MR. HANSEL: So we agree on that.

THE COURT: You agree on that. What's that last little bit?

MR. HANSEL: The last little bit, Your Honor, is suppose that -- to pick an arbitrary example, suppose Yazaki produces a document in the wire harness case that might otherwise be considered privileged and they do so on purpose intentionally -- I want to be clear, this is not about inadvertent production, it is about intentional waiver of privilege by producing a document. So if Yazaki waives a privilege by producing a document in the wire harness case Yazaki would not be permitted under the plaintiffs' proposal to reinvoke the privilege in the fuel senders case as to the same document in a case where Yazaki is also a defendant.

So it is only -- this only applies to defendants in the wire harness case who are also defendants in some other case who intentionally produce a privileged document in the wire harness case not inadvertently.

THE COURT: They waive privilege in wire harness?

MR. HANSEL: Right.

THE COURT: So if they waive privilege basically in one part do they waive it in all parts?

MR. HANSEL: That's exactly the issue. Your Honor put your finger on it. The rule gives the Court discretion and the rule is very short, this is 502(D) of the Federal Rules of Evidence, a federal court may -- so it is up to the Court -- may order that the privilege or protection is not waived by disclosure connected with the litigation pending before the court in which event the disclosure is also not a waiver in any other federal or state proceeding. So the Court has discretion in general in this area.

THE COURT: Okay. Let's hear what you have to say about this.

MR. RUBIN: Thank you, Your Honor.

This provision has nothing to do with an intentional waiver by Yazaki, Sumitomo, Fujikura or anybody else. The normal -- the bogeyman of using the privilege as a shield and a sword where we intentionally waive on this one document because it is helpful in this case.

THE COURT: So you agree with him, if they intentionally waive it then they have waived it?

MR. RUBIN: Correct, we agree with that. The language that is here all talks about the use of paralegals, that they are not going to argue waiver there, no one else should be able to do that as well, documents produced that might be inadvertent as the term is defined under the protective order, or otherwise pursuant to production

procedures agreed to by the parties. Again, an agreed-to procedure regarding other efficiency measures to get documents to the plaintiffs in a less burdensome manner. This has nothing to do with intentional productions and intentional waivers for privilege and sword reasons. So the concerns there are just this language doesn't get to that in any way, shape or form.

THE COURT: So you need better language to deal with the inadvertent waiver -- well, it is not even a waiver, the inadvertent production?

MR. RUBIN: Respectfully, Your Honor, I think this language deals with it clearly. I don't think -- there is no suggestion here that anybody is waiving as to an intentional production. In fact, the last sentence of it says the parties reserve the right to challenge a party's assertion of privilege or any other protection from disclosure on any other grounds. Other grounds would certainly include an intentional disclosure. It is simply the carve-out for the other auto parts plaintiffs, aside from the wire harness plaintiffs, that seems to be -- that's the dispute here.

THE COURT: So if you waived as to wire harness plaintiffs you don't waive as to another part, instrument panel or --

MR. RUBIN: I don't think that's correct, Your Honor. This isn't really about waiver. It is about

producing something that was privileged -- something that slips through the cracks, not an intentional waiver. It is about the -- in a massive production privileged documents will almost invariably slip through the cracks, and 502(D) recognizes that. Rule 502 generally recognizes that, and that's the purpose of it, so that reasonable protections are put in place. The question is in a later case can fuel senders argue that because we use paralegals or because we agreed to some other efficiency means with the wire harness plaintiffs in the future that we didn't take adequate protection, something slips through the cracks and sorry, that waiver wasn't inadvertent but it was rather simply from sloppiness on your side because one of the components of inadvertence is taking reasonable protection of the privilege. So we want to take those arguments off the table so that we can make reasonable steps to get documents to the plaintiffs more quickly.

THE COURT: Okay.

MR. RUBIN: Thank you.

THE COURT: You have another comment? Okay. Go ahead.

MR. HANSEL: I wanted to propose a solution, Your Honor, because -- this is Greg Hansel again.

Counsel just stated that defendants have no objection to a waiver -- an intentional waiver in wire

harness also being a waiver in other parts for the same defendant. I have a suggestion --

THE COURT: Is that all you want?

MR. HANSEL: I have a suggestion about a sentence that we could use to fix the plaintiffs' proposal along those lines.

THE COURT: Okay. I'm looking now on page 13 of your brief, which the -- I guess this is the defendants' proposal.

MR. HANSEL: I'm looking on page 11 of Exhibit A --

THE COURT: Okay.

MR. HANSEL: -- which has both sides' version.

At the end of the plaintiffs' proposal there is a phrase, other than in the automotive parts antitrust litigation. So perhaps the way to solve this would be to end the previous -- end the sentence after the word proceeding, and then have a new sentence that says however, an intentional waiver in the wire harness case shall also be deemed a waiver in other automotive parts cases.

THE COURT: Okay. Seems reasonable. Mr. Squeri, any objections?

MR. RUBIN: No, that works for the defendants.

MR. SQUERI: That's fine, Your Honor.

THE COURT: Got it. Thank you.

MR. HANSEL: Thank you, Your Honor.

THE COURT: If I may turn to the third issue -- do you want to go this time?

MR. SQUERI: Yes.

THE COURT: We are talking now about the class-certification issue?

MR. SQUERI: Yes, Your Honor. This is the issue regarding scheduling on class certification.

Your Honor, it cannot be disputed but that in a case of this nature class certification is truly a critical issue, if not the critical issue, to be decided. Our difference with plaintiffs comes down to something very simple, plaintiffs want to put off the briefing on this very critical issue until after the conclusion of all merits discovery. Defendants believe that such a delay is unwarranted and cannot be justified. Defendants instead propose the start of -- the start of class certification briefing taking place within 180 days after the DOJ-related stay is lifted, but I think it is important to point out, Your Honor, what that really means in terms of time line.

Even under the schedule -- the shorter schedule that defendants are proposing here, at the very earliest class-certification briefing would begin December of 2014. And briefing and the hearing on class certification would not be completed until the third or fourth quarter of 2015, approximately four years after this case was -- these cases

were first filed. And if the DOJ's stay is postponed just another six months, we are talking about getting class-cert briefing and the hearing done in 2016. And then if we were to consider what plaintiffs are proposing you would add at least another six months onto those time periods, and we could be looking at briefing class certification in 2016 or even 2017.

Again, Your Honor, I'm sure I don't need to mention to you, this is case number 1 of 27, and if we are looking at class certification briefing on that time schedule I would submit that's problematic but also for defendants --

THE COURT: We will have to build in some retirement party.

MR. SQUERI: We can call it the auto parts retirement plan.

But, Your Honor, I think the analysis that ought to be applied here is straightforward. As we consider the timing issues and the consideration of class certification we have to start with the simple directive of Rule 23(C)(1) that most of us are familiar with, and that is, quote, at an early practicable time after a person sues, or is sued, as a class representative the court must determine by order whether to certify the action as a class action. How soon is, quote, early as practicable has not always been clearly defined, but I respectfully submit that it should not and need not mean

more than the completion of briefing on class cert beyond four years after the cases were filed.

And, Your Honor, you know, not too long ago I can remember in antitrust cases -- the law has changed a little bit but in antitrust cases at times you would bifurcate discovery between class and merits. The law has changed where we are now required and it is appropriate to look into merits, but there's still a considerable amount of class-certification discovery that can go on before we even begin the merits process. Although we have already begun to provide written merits discovery in terms of document productions, the documents we produced previously or that will soon be producing, we've already begun the process of responding to interrogatories, and plaintiffs will have a full opportunity even before the DOJ stay is lifted to conduct the type of discovery that is oftentimes part of class certification.

THE COURT: So you are saying that discovery would go on for 180 days after the DOJ lifts its stay?

MR. SQUERI: Before they would have to file their class-cert briefs, yes.

THE COURT: Yes, before they file their briefs. And at that point they have to file their class-cert briefs --

MR. SQUERI: That's right.

THE COURT: -- depending upon which case, which part and where they are?

MR. SQUERI: Right. We are only addressing the wire harness case at this point in time, Your Honor. And part of the reason why we think that's reasonable is, again, I go back to the point that we recognize that now under the case law merits is part of the consideration, but there is no case law out there that suggests that -- at least that we are aware of that there is any requirement that you have to complete all merits discovery, which is what plaintiffs are proposing, before they have to file their class cert briefs. The question really is how much in terms of depositions they are going to need to do once that DOJ stay is lifted? Whether it is 10 or 20 depositions or whatever to help them get the information that they need in order to complete whatever other discovery they've got -- they've completed in order to file those class cert briefs is really the issue that needs to be resolved in connection with that. And we submit, Your Honor, that, you know, 180 days is more than sufficient to do what they need to do although I would candidly say we have asked plaintiffs on a couple of occasions how many depositions do you think you need to take, merits deps you need to take before filing the class-certification briefs, and they have not given us a number, so I'm throwing out 10 to 20 but I think certainly

they should be able to do what they need to do in that period -- in that period of time.

There are a couple other issues regarding the class-cert briefing issues. I can address those now as well, Your Honor?

THE COURT: All right. Go ahead.

MR. SQUERI: You know, one relates -- these are more administrative than anything else. One relates to the question of how much time defendants and plaintiffs will get in filing -- preparing their responses and reply briefs. We've proposed 120 days for us to be able to respond to their class-certification motion because as part of the proposal that both parties have agreed to -- both sides have agreed to we would be submitting -- they would be providing us their expert witness reports contemporaneous to the service of the briefs, so we would need during that period of time to study those expert witness reports, take their experts' depositions, prepare our reports, prepare our response. We are asking for 120 days, they propose 90 days.

One of the other differences is we have asked for -- we have suggested 60 days for their reply brief, they have suggested 90 days, we think the 60 is more reasonable.

There are two other differences. Both proposed schedules contemplate that plaintiffs would have the opportunity if appropriate to submit rebuttal expert reports

after we provide them with our expert report. We have no problem with that. However, our language says that it needs to be rebutting our expert report, they don't have that particular qualification or limitation assigned to -- included in their language.

And finally there is a provision in our proposed schedule that would build in a time for a sur reply brief from defendants but that sur reply timing is if appropriate, and we recognize we don't necessarily have a qualified right to a sur reply brief but we just felt that it would be appropriate in looking at the schedule to have everyone understand if there was going to be one, if it was appropriate, when that would be filed, and I think we have it set in our proposed schedule at 45 days after we get their reply brief.

There is one other thing I had forgotten, our version of the plan, and I'm not sure whether the plaintiffs intended to exclude this or not, but our version allows for depositions of experts who submit either rebuttal or sur rebuttal reports.

THE COURT: All right.

MR. SQUERI: Thank you, Your Honor.

THE COURT: Mr. Hansel?

MR. HANSEL: Thank you, Your Honor. In the view of all of the class plaintiffs it is premature to set a deadline

now for the class-certification motions because merits discovery is stayed. Plaintiffs propose that immediately upon the lifting of the DOJ stay the parties meet and confer and within 30 days of the lifting of the stay submit to the Court either a joint schedule or separate proposed schedules. Call me an optimist, but based on our experiences in this case many orders have been stipulated to and there's a good chance the parties will agree to this proposed stipulation as well.

Defendants propose only 180 days after the stay is lifted before all class plaintiffs would be required to file their motions for class-certification briefs and expert reports. That short time denies the plaintiffs a reasonable opportunity to take discovery on merits issues that apply at the class-certification stage.

In the Whirlpool case, a Sixth Circuit case, cited in our section of the joint submission, it was determined that merits questions may be considered, if relevant, or to the extent relevant, in determining if the elements of Rule 23 are satisfied. There may be some overlap, in other words, between class-certification issues and merits issues. We expect the defendants to raise a number of merits issues at the class-certification stage including impact and other merits issues. Mr. Squeri has readily acknowledged that the Court, as he puts it, is required to look into the merits at

the time of a class-certification motion. So the plaintiffs believe that based on things that we don't know and other things that we do know the 180 day hard-and-fast deadline is just insufficient. Here is --

THE COURT: You want 30 days after this to meet and confer and come up with a schedule?

MR. HANSEL: Yes, Your Honor, that's what we propose. This is really a supplemental discovery plan, not a class-certification schedule that we are here for today. So there are some things we just don't know today. We don't know when the stay will be lifted. By its terms the DOJ stay may be lifted as early as six months after it was entered on December 23rd, that would be around May 23rd of this year. However, we don't know what the DOJ's position, as the Court determined earlier, they are not apparently here today.

We also don't know how much discovery the parties will get done before the stay is lifted. We know they won't get done any merits discovery but we don't know how much other discovery they will get done before the stay is lifted.

Let's look at what we do know. We know the scope of the stay, and I'm going to point out from the Court's order on the DOJ stay on December 23rd, at page 2, there are sort of two categories of discovery that is stayed. The first is with respect to documents. Plaintiffs are stayed and prevented from getting documents that include information

with regard to later case products. So you recall the stay divides all the cases into the first four products and then everything else. So if there is a document, for example, with regard to wire harnesses that also mentions a later case product, plaintiffs are not allowed -- or defendants are allowed to withhold that document at this stage as a result of the stay.

Another category of documents has to do with contacts with competitors who are involved in later cases, and then a third category is documents with respect to conspirators who have not yet pled guilty.

THE COURT: So you are saying there's lot of discovery you may need?

MR. HANSEL: There's lot of document discovery stayed, and the second big category is deposition discovery that's stayed, and likewise there are three categories.

THE COURT: You don't have to go through that because I'm ready to rule.

MR. HANSEL: Okay. If the Court --

THE COURT: What?

MR. HANSEL: If the Court wants me to sit down I will sit down, I do have some more points, but if the Court would prefer to go ahead and rule?

THE COURT: I would prefer to go ahead and rule.

MR. HANSEL: All right. Very well.

MR. SQUERI: Your Honor, respectfully may I respond to --

THE COURT: I didn't let him finish, but you can respond for two minutes.

MR. SQUERI: Your Honor, the reason that I want to respond to Counsel's comments is we would take strong issue with the suggestion that somehow they are being kept from merits discovery. Again, we provided them our DOJ production 16 months ago. And they -- and they are serving, we have responded to interrogatories on merits issues. Their document requests that they served on us that we are meeting and conferring on relate to merits issues. The fact that, you know, there is a stay with respect to other parts doesn't change the fact that they are able to continue with the discovery in this case, and they will be able to take Rule 30(b)(6) depositions that are all going to be relevant to the class-certification issue.

THE COURT: Okay. I have heard enough. Thank you.

MR. SQUERI: Thank you.

THE COURT: I mean, what it all comes down to is we don't know yet what we don't know, we don't know where we are going here. I have no problem with plaintiffs' proposition that after the stay is lifted within 30 days you meet and confer and come up with a schedule, or you come to the Court and the Court will make it and it may be that it will be six

months from then. I'm not disagreeing with what defendants propose, that the six months would be enough, but I need to know more about what is happening with this discovery, and I just don't know it yet. I do not have a feel for your discovery. I know that plaintiffs may have eaten up the 12 million pages but I'm not getting anything from them about what it means.

So, you know, I think we need to know a little bit more. I do think we need to have a definite plan and schedule for our class certification, I agree with that wholeheartedly, I just think that we need to wait a little on that schedule, but I don't think plaintiffs should take the position or take the belief from me that you are going to have all kinds of time now because I'm not granting exactly what defendant says. I'm just saying I will wait those 30 days and see what you come up with, but you are not having unlimited discovery, we need to move on this. So when we are thinking six months, that sounds good, it may be nine months, I don't know, but that's kind of what I'm thinking. I just need to wait and see what that is going to be. Let's do that, let's do the 30-day meet and confer. Okay. Thank you.

MR. HANSEL: Turning to the fourth issue, Your Honor?

THE COURT: The amendment?

MR. HANSEL: The amendment and joinder of the

parties. Plaintiffs propose the following sentence, class representatives may be added or dropped up to the time that motions for class certification are filed upon such terms as the Court may order.

Plaintiffs believe this is a very ordinary provision. The Court has discretion to do this anyway under the federal rules, but we think it is just worth noting that various of the plaintiffs, the auto dealers, the end payers, the direct-purchaser class plaintiffs, all agree on this, that sometimes in a case it is possible that a new class representative may appear, may need to be added. In fact, there are cases where courts have allowed that after ruling on a class-certification motion or after class certification has been fully briefed, a new plaintiff files a lawsuit, it gets incorporated in the overall case. So the guiding principle here in class-action litigation is that if the Court is inclined to find a class should be certified the plaintiffs should have -- the class should have a reasonable opportunity to be represented by a class representative, and the class should not fail for lack of a representative if a representative comes forward to serve in that capacity. So plaintiffs respectfully ask for that provision to be included in the supplemental discovery plan.

THE COURT: Mr. Squeri?

MR. HANSEL: Thank you, Your Honor.

MR. SQUERI: Your Honor, the parties are in agreement as to what the general deadlines should be for amending motions to amend the pleadings in the case. Where we do disagree, as Mr. Hansel pointed out, is on this issue of when they should be able to add class representatives, named class representatives, in a case. And their proposal is to name these class representatives up until the day that they file their class-certification motions.

Your Honor, part of our process in preparing to respond to the class-certification motions is going to be to conduct discovery directed at the named representatives. In fact, some of that is ongoing, and it is -- and it has been a few months since we served some of that discovery on some of the named class representatives and we haven't gotten it yet. In order for us to adequately prepare to allow enough time to proceed with defending class certification we should know well, well in advance, Your Honor, of any -- the filing of any class-certification motions, who it is that is actually seeking to have this case made into a class action.

THE COURT: Okay. Well, as you are preparing your motion to certify the class I'm assuming you are looking at who is in your class, what your named plaintiffs are, right?

MR. HANSEL: Yes. The named plaintiffs are already current -- the current named plaintiffs are before the Court, they are the plaintiffs.

THE COURT: But, I mean, at the time you are filing your motion wouldn't you know? I mean, you want to have the time right up to that date, and I know that there are cases where people are added later but it seems to me if you are going to modify or substitute a named plaintiff, say, that you should really know about it in almost all circumstances well before you are ready to file your motion to certify, right?

MR. HANSEL: Not necessarily, Your Honor.

THE COURT: Why not?

MR. HANSEL: Because during discovery the parties all learn about facts and, for example, merits discovery is now stayed but even after merits discovery recommences we may learn that there are certain facts that come out in the case that suggest that a certain class representative is inadequate and another class representative may be adequate, a certain class representative may be typical, another one may not be typical. And I think the principle is a principle of equity the courts apply in class-certification decisions to try to reach the merits. Courts don't like to say, you know, gotcha, you had the wrong class representative and your case goes down the tubes, and so courts normally afford plaintiffs an opportunity to substitute a class representative where appropriate.

Now, there shouldn't be any prejudice to the

defendants whatsoever from adding a class representative as a result of such a process. The defendants absolutely have the right to depose that class representative to get documents, that could be all done on an expedited basis if, indeed, a named plaintiff were added on the eve of a class-certification motion.

THE COURT: Okay. I don't think anything here we are saying got you because I certainly don't want to say got you on anybody but I think at some point in time we have to say we are done, I mean, there has to be an end, but I do think that there are circumstances when class plaintiffs have to be substituted. If that should occur I think we will deal with it when it comes up. I don't think it is something I'm going to say now that you can't add until the end -- I mean until you file your motion. Obviously if you need to add or substitute at the time that you file your motion that's going to affect defendants and it may certainly affect defendants' time necessary to respond to your motion if there is further discovery. So I would only say which I believe is -- generally the process is that in the exceptional circumstance when you need to do it it may be allowed, so you tell me what the exceptional circumstance is when we come there, when we get there.

So I'm not going to grant what defendant wants but I'm also going to warn plaintiff I want good cause, I want to

know why we would do this at the last minute. Okay. So I guess you could say that the substitution or addition would be with permission of the Court.

MR. HANSEL: Your Honor, would the Court like an order on the various --

THE COURT: I would very much so.

MR. SQUERI: We will work on it together, Your Honor.

THE COURT: Yes, please do it together. All right. Now we have Ford.

MS. KELLY: Good afternoon, Your Honor. Cindy Kelly for Ford.

Your Honor, there are three issues in dispute -- in connection with the supplemental discovery plan in dispute with defendants, and that is the sharing of discovery, the timing of discovery from Ford and the production of transactional data. I can either discuss them one by one or altogether, however you want?

THE COURT: Well, I think, first of all, there is one thing, I have an order that I -- that has not been entered, which is a proposed order, and it basically is Ford's status in this case. Somebody at our last meeting I think hit it on the head, we were talking about what is Ford's status?

MR. KELLY: I believe Your Honor entered that order

on Monday.

THE COURT: Did I do that?

MR. KELLY: Yes, that was entered.

THE COURT: Okay. I didn't even look as of Monday. I had it here and I had questions, and I went back and read the transcript of the last status conference and there was a lot of discussion on this. So is the order -- this proposed order that you submitted or was it modified, do you know?

MR. KELLY: Yes, it was stipulated, Your Honor.

THE COURT: All right. Then that's fine. Thank you.

MR. KELLY: Thank you.

THE COURT: Okay.

MR. KELLY: Ford is only asking for what is commonplace in an MDL, and that is that there be shared discovery and that it have access to the previous discovery conducted by the parties, that it be included in discussions about discovery disputes and that it have the same enforcement rights with respect to discovery as the other parties do. And, Your Honor, there is absolutely nothing unusual about this request. This is how MDLs are routinely conducted. Otherwise, coordination and conservation of resources, the main goals of an MDL, would be absolutely impossible. And defendants' position just doesn't make any logical sense.

Ironically the defendants include in their proposed supplemental discovery plan a provision which requires Ford to engage in best efforts to coordinate discovery and avoid duplication. And Ford has agreed to do that as all parties should in an MDL, but it can't be done unless Ford has access to the previous discovery that has been provided to plaintiffs. What we are essentially talking about at this point are the documents provided to the DOJ. Other than Fujikura, which just yesterday finally produced their DOJ documents to Ford, defendants refuse to provide this discovery, and their only argument is that Ford, they claim, would not necessarily be entitled to this discovery under Rule 45 if this were not an MDL, but, Your Honor, this is an MDL.

The cases were consolidated for pretrial purposes because they were related. None of the parties objected to that consolidation and they had ten days to do so under the case-management order. Now they have to live with the results of consolidation. There is supposed to be shared discovery in an MDL, and the defendants have not come forward with a single case, not one case, in the context of an MDL, in which discovery was restricted in the way that they seek to do here. Instead, what they do is they rely on exclusively non-MDL case law dealing with the scope of Rule 45 discovery on non-parties and non-MDLs, which is just

wholly irrelevant here.

Your Honor, we have cited several cases which support the concept of shared discovery; In Re: Facebook, In Re: Asbestos; the manual on complex litigation discussing MDL says discovery already taken shall be available and useable in tagalong cases, end quote.

THE COURT: This isn't a tagalong though?

MR. KELLY: No, but it is essentially -- Your Honor, it is the same scenario where you have an action later filed and the idea is you share the discovery to expedite the process, put everybody on the same schedule, share the discovery and share the efficiencies of what an MDL is intended for.

Your Honor, the NCFE case is a perfect example where that happened. There were 16 actions consolidated in that case. Moodys was named as a defendant in only one case. Nevertheless, discovery was shared. Moodys provided their documents to plaintiffs who did not name them as a defendant, provided their interrogatory responses to plaintiffs who did not name Moodys as a defendant. That is how the NCFE case, Your Honor, which I was involved in, was able to operate so efficiently. Nobody was arguing that certain parts of discovery should not go to certain parties. Once you are consolidated into an MDL the idea is you share all the discovery.

Your Honor, even if Ford did have to make some showing of relevance to gain access to the previous discovery in the MDL, which, as I said, defendants have not come forward with even a single case to support this idea, but obviously the same discovery that is relevant in the punitive class actions is also relevant in the Ford action. There is a clear overlapping of issues among the actions, that's why the Ford action was consolidated in the first place. The consolidated actions, including Ford, are all based on the very same conspiracy in the wire harness industry which involved price fixing, bid rigging and allocation, which, Your Honor, is a decision among the co-conspirators to not bid.

That's exactly what happened in the case of Ford. Fujikura's counsel was making a big deal before about not bidding with respect to Ford's RFQs, but it is black letter law, Your Honor, that allocation is also an antitrust violation so, for example, conspiring and saying, okay, we won't bid with respect to Ford because they are yours and we will get other suppliers, we will get other OEMs, and those will be our OEMs. That's the very same violation, so we are talking --

THE COURT: You are saying it is the same conspiracy even though you are only directly suing one of the --

MR. KELLY: Exactly, Your Honor, it is the very same conspiracy, it is different aspects of antitrust violations, whether we are talking about price fixing, bid rigging or allocation not to bid, it is the very same co-conspirators that have been name as defendants in the punitive class actions as we have identified as co-conspirators in the Fujikura complaint. Yazaki, Sumitomo, Furukawa, those are the co-conspirators that we have identified. It is the very same guilty pleas have been identified and support the allegations in the Ford complaint as are identified and support the allegations in the punitive class actions.

And, again, while defendants seem to recognize that the scope of guilty pleas does not limit what you can plead, they don't recognize that those same guilty pleas provide support for Ford's allegations, so when you have guilty pleas that span from a ten-year period, from 2000 to 2010, which we do with respect to several of the co-conspirators, does that make Ford's allegations as to a conspiracy directed at Ford involving allocation and bid rigging less speculative? Of course it does.

So Fujikura's attempt to use those guilty pleas to limit Ford's claim is exactly the opposite from what we should be talking about. They support Ford's claims because those guilty pleas make it more likely that Ford was also a

target and damaged by this conspiracy, and that's what we need to keep in perspective here.

THE COURT: So tell me what you want, you want all the discovery?

MR. KELLY: Absolutely, Your Honor, that's just the way an MDL works, and there is no reason to limit it. There is no reason to make us jump through hoops and serve Rule 45 subpoenas when clearly all of those DOJs -- we are talking about the documents that were provided in connection with the DOJ investigation. Of course they are relevant to Ford's claims. It is the very same conspiracy that we are talking about. So to make us jump through those hoops and engage in arguments back and forth, the relevance, is just a waste of everybody's time.

THE COURT: Okay. Who is going to --

MR. SQUERI: I will.

THE COURT: Mr. Squeri.

MR. SQUERI: Your Honor, before I address all of Ms. Kelly's points, let me first start to address two preliminary matters.

I mean, one, Ms. Kelly suggested that somehow our cases have been consolidated. In fact, the stipulation we entered into was coordinated, these are not the same case at this point in time from the standpoint of procedure.

Second of all, one of the issues that came up this

morning, Your Honor, was the stipulation involving the Yazaki employees and their participation and the right of Ford to come in and ask questions during their depositions. We have made clear the position of Yazaki and those individuals is Ford can come in, they just need to share time with the plaintiffs. I mean, we are --

THE COURT: You mentioned that -- one of the notes that I made is to distinguish this coordinated versus consolidated, these terms, and how that -- what position that puts Ford in relationship to this case.

MR. SQUERI: Well, I think that the consolidated -- it is interesting the Court should ask that question because I was asking that amongst some of our colleagues earlier. Consolidated means it actually becomes the same case, it is the same litigation. Coordinated simply means that they become coordinated with each other, and that's what the parties stipulated to from the standpoint of procedure here. The cases are not themselves merged, they are part of the same MDL, they are coordinated with each other but they are not consolidated with each other.

If I could --

THE COURT: Okay.

MR. SQUERI: If I could move on, Your Honor?

THE COURT: I suppose it has some meaning, but go ahead.

MR. SQUERI: Ford has raised essentially four objections to the plan. I submit, Your Honor, none of them have any merit. First they want the plan to require, as we just heard Ms. Kelly, that all discovery produced by defendants to plaintiffs -- to the group plaintiffs is turned over to them automatically and without regard for whether it has anything to do with Ford or is relevant.

Second, they want the right to enforce discovery requests that are served on us by punitive class-action plaintiffs without regard for whether or not Ford could have -- could have even sought such discovery itself.

Third, they want the plan to stay third-party discovery of Ford.

Fourth, they have some issues regarding the plan's provisions on transactional data, which Mr. Rubin will address a little bit later.

But first turning to Ford's claim to all discovery. Contrary to Ford's suggestion there is no requirement in the case law that Ford should get all of the discovery provided by defendants in the punitive class action that defendants which Ford has not sued, neither in the rules nor the case law.

THE COURT: But isn't Ford saying this is the same conspiracy even though they haven't sued them?

MR. SQUERI: Your Honor, we heard that this morning

and we just heard it now from Ms. Kelly. You know, two points to be made here. First of all, once again, they have only sued Fujikura but we heard counsel for Ford this morning, and Ms. Kelly repeat, that somehow there is some broader conspiracy. As we heard this morning, there is -- first of all, there is no umbrella conspiracy that has been alleged by Ford. Second of all, and I think critically because there was -- I think there was a very significant misstatement this morning, Your Honor, the plea agreements I can tell you with respect to my client and with respect to the other wire harness defendants that I'm aware of did not include any type of customer allocation of material. Our plea agreement said that it related to certain OEMs, and while I recognize that it is not evidence, Your Honor, DOJ made clear this past August that the preceding plea agreements had nothing to do with Ford, they were related to other car makers. And for Ford to come in here and say that somehow they include a customer-allocation conspiracy, that's just not there, it is not in the document.

I think what is also critical here, Your Honor, is that, yes, Ford is asserting similar claims, I don't deny that there is some amount of overlap that exists, but it is not complete overlap. They are asserting a conspiracy that affected Ford, not all of the other OEMs, which is what the class plaintiffs are asserting. And to be clear, we

recognize, Your Honor, that we need -- they need to get -- assuming that the Court allows their complaint to continue, that we would need to provide them a big part of the discovery that we turn over in the case.

All we are saying is it shouldn't automatically be all of it. There is some need for a relevance test to be applied. We are not just being technical about it, Your Honor, I mean, just to give you an example, you know, of a concern that we might have. Let's say we are talking about discovery and this is, in fact, reflected in some interrogatory responses and some of the documents that plaintiffs are seeking, that asks for the details of the RFQ process and the way other car manufacturers actually cost their products. Let's say it relates to GM, Chrysler, Honda, Toyota. Why does Ford necessarily get those documents? Our customers -- those customers would certainly expect us to resist that discovery just as I would expect Ford would. We are not going to be crazy about this, Your Honor. We recognize we need to be pragmatic and that there are certain fights that's not going to be worth fighting, but all that we are saying is that Ford doesn't simply get automatically what they are asking for.

And just to be clear, from my client's perspective with respect to the DOJ production, we are prepared to provide Ford with those documents. We have been waiting for

them to officially become subject to the protective order, which is something that we have been relating to them.

The other issue, Your Honor, is whether or not they are necessarily entitled to step in the shoes of the plaintiffs.

THE COURT: To enforce the --

MR. SQUERI: To enforce them. Your Honor, they cite no authority to support the proposition that they can stand in the shoes of somebody else. Just as we are limited in the discovery we can obtain from Ford under Rule 45, that is what they are limited to as well. They are not entitled to somehow assume the rights of parties who are, in fact, in litigation with us who have a great deal more additional rights when it comes to discovery. You know, I don't know of any authority that suggests that they have the right to simply just stand in their shoes and demand the same discovery, and I don't think what they are seeking there is in any sense appropriate.

You know, with respect to some of the case law that counsel cited, none of those cases support the broad order that Ford is seeking. I'm going back now to, you know, they give us everything. They don't say that they are automatically entitled to it. They vary from case to case. In fact, the Moodys case, the case involving Moodys which counsel was talking about, which they were involved in,

Moodys shared their interrogatories with some plaintiffs, at least that's the way the documents read to us, and not others. It is not -- there is a need, there is an undeniable need, for the parties to recognize that we are in a coordinated proceeding, we need to proceed in a rational way, but that doesn't mean that all of a sudden their rights are expanded and that they have the right to get things that they wouldn't otherwise get or that they necessarily should get everything that a group of plaintiffs are getting who are asserting a much broader set of claims.

MR. KELLY: Your Honor, if I may just address a few points?

Defense counsel are trying to rewrite MDL law, and what I think is clear is that they don't have any case support. They do not bring a single case to Your Honor's attention for this idea that in MDL there should be some kind of segregation of discovery. It is just not the way it is in any MDL case.

With respect to counsel's argument about allocation and --

THE COURT: Why are you coordinated then instead of consolidated?

MS. KELLY: Your Honor, that's really a distinction without a difference. We are coordinated for pretrial proceedings, and that's often the way it is in an MDL

proceeding, and then after all of the pretrial proceedings the cases will often go back to their original jurisdictions for trial, but for terms of discovery it is a distinction without a difference. We are part of the MDL proceeding. We are coordinated for pretrial discovery purposes, and that's the way it is. That's the way it was in the NCFE case, that's the way it often is in these cases, so while counsel is trying to make something of these distinctions it has absolutely no relevance here.

I would like to read to you from the Yazaki plea agreement. It states, quote, during such meetings and conversations agreements were reached to allocate supply of automotive wire harnesses and related products sold to certain automobile manufacturers on a model-by-model basis. The Fujikura plea agreement has the very same language. So counsel's attempt to say that there was no plea with respect to allocation is just inaccurate.

Also I think what defense counsel continuously ignores is the very basic concept of joint and several liability. These co-conspirators are responsible for all damages to Ford for the entire conspiracy, whether they bid on one, for example, the CD4 bid -- Your Honor, just to be clear, the CD4 bid was included in Ford's complaint solely as an example because it is a very complicated process, the bidding process, and so we included it there as an example of

how the RFQ bidding process worked. That level of specificity is absolutely not required in a complaint to allege an antitrust allegation, so it is kind of ironic that defendants are trying to limit it to the CD4 when we use that to go above and beyond --

THE COURT: Slow down.

MS. KELLY: Sorry. To go above and beyond what is required in a pleading simply for exemplary purposes.

THE COURT: Let me ask you this, I assume you are going to be coordinating with the other plaintiffs in the discovery requests?

MR. KELLY: Yes, Your Honor. We have committed to do that. We have committed to do that provided that we get the other discovery because obviously we can't make efforts not to duplicate when we don't know what has already been produced, but we have committed to serve comprehensive document requests by March 15th as long as we get access to the prior discovery so that we can see what is going on, so we can actually make significant efforts to cooperate and to facilitate the process.

THE COURT: But are your comprehensive discovery requests going to be done with the other plaintiffs or are you going to be doing your own, I mean, how separate are you in this case?

MR. KELLY: We are happy to cooperate with the

plaintiffs as much as possible. If that means submitting joint document requests that's something we would be amenable to as long as we have all of our requests incorporated in that, but in order to do that we have to have enforcement rights, that's one of the issues that counsel just addressed. They don't want us to be involved, they don't want to give Ford even notice of discovery disputes, even if we have the very same issues, the very same problems, they don't want to give Ford notice of discovery disputes. They said it is not required. They don't want to give us enforcement rights.

So what they are saying, for example, is all of the other plaintiffs, if one plaintiff serves discovery any other plaintiff can then decide, okay, I won't duplicate that because that discovery demand has already been made and I know later on I can go and enforce that discovery request. They don't want to give Ford that ability. So they want us to make efforts not to duplicate, but they don't want to give us the right to enforce other people's discovery requests. It just can't work that way. We are happy to coordinate our requests with the other plaintiffs, to not duplicate what has already been requested, but then we obviously have to be able to enforce those requests that have already been made, other than -- otherwise we are just proceeding at our own peril.

THE COURT: Okay.

MR. KELLY: Your Honor, with respect to the Yazaki

depositions, Your Honor already decided that issue. That was briefed and argued at the prior conference in November. Mr. Spector I think was trying to revisit and reargue Ford's ability to attend those depositions and that's an issue that has already been decided. I believe the only issue was to make clear in the order that Ford has the right to attend those deposition and that we would work out our time with the plaintiffs. I believe that's something that we can do. I don't see that there should be any problem in other MDL --

THE COURT: That's done, I agree with you. Okay.

Mr. Squeri? I'm sorry, but we have to move along here.

MR. KELLY: Yes. Thank you, Your Honor.

MR. SQUERI: Your Honor, if I could respond to a couple of issues?

First of all, the plan does contemplate Ford's participation and coordination. To be clear, we have no objection letting Ford know when we engage in meet and confers. In fact, it is my understanding that, you know, that Ford was invited to the Sumitomo meet and confer, they are invited to our meet and confer, we have no problem with that whatsoever. We have -- all we are asking is that they proceed pursuant to Rule 45, that's what they are entitled to. To the extent there is overlap we will deal with that and we will provide them discovery that they are entitled to.

Your Honor, the last chart of -- slide amongst the charts that we provided you compares the cooperation requirements in the plan as drafted between defendants, plaintiff groups and Ford, and it recognizes that with Ford it is going to be necessary for them to simply do the best they can to avoid duplication. Duplication is not forbidden. We recognize that there may be some that occurs but that with coordination it probably can be minimized.

Finally, Your Honor, the plea agreement that they just read includes nothing about customer allocation. The language was read quickly but let me read it slowly. During such meetings and conversations agreements were reached to allocate the supply of automotive wire harnesses and related products sold to certain automobile manufacturers on a model-by-model basis, et cetera. It doesn't say anything about allocating customers. It limits it to certain customers. DOJ made clear in its recent press release that it did not relate to Ford.

THE COURT: All right. Yes?

MR. COOPER: Your Honor, there was some reargument I think of the motion to dismiss, and I just didn't want the Court to think because we weren't responding to the argument Ms. Kelly made that we agree with those. Thank you.

MR. KELLY: Your Honor, I believe that the only two issues that haven't been addressed are discovery from Ford

and the transactional data issue. May I address those briefly?

Your Honor, defendants would have you think that Ford is trying to avoid its own discovery obligations. It is not. It is only asking that discovery be coordinated between the Ford action and the punitive class actions to alleviate the burden on Ford of duplicative discovery, again, one of the goals of an MDL, and exactly what defendants have been arguing for all afternoon. And this, of course, would allow the Court to address discovery disputes once rather than twice.

The discovery in the Ford action itself, as Fujikura has essentially agreed, is stayed by virtue of the pending motion to dismiss. This has been the practice in the MDL and set forth in the initial discovery plan, and it obviously just makes sense. So all we are asking from the defendants in the punitive class actions, whether they seek discovery from Ford as an absent class member or under Rule 45, is just to wait until the resolution of the motion to dismiss so that we can forward on one schedule with respect to Fujikura and the punitive class defendants so that we can avoid duplication.

There is obviously no prejudice to defendants by this short delay, especially in light of the DOJ's stay. It is supported by the case law pertaining to discovery sought

from absent class members, they can pursue party discovery first. And it is just really the same courtesy that the defendants have asked for. We have agreed to expedite and serve our comprehensive requests on March 15th so that they can do one comprehensive search. We are asking them to just do the same, wait until the motion to dismiss so we know what the scope of the action is in Fujikura and let's deal with one set of comprehensive requests at one time so we can do one comprehensive search.

Finally, with respect to transactional data, defendants and class plaintiffs, Your Honor, have been negotiating the scope of transactional data to be produced to each other for well over a year, and they have agreed to complete their meet and confer on those requests by February 15th. Defendants have asked Ford to also serve its requests for transactional data by February 15th. Given the infancy of the Ford action it would be extremely difficult for Ford to do this, however, we stated that we would endeavor to do so if the requirement was mutual and if defendants also served their requests for transactional data on Ford by February 15th, that way the parties together could negotiate the appropriate parameters of the requests and make decisions that would have mutual burdens upon each other. This is precisely what was ordered under the initial discovery plan which states that, quote, the parties will use

their best efforts to mutually agree on the scope of the wire harness transactional data to be produced. The data, mutually agreed upon, will be reciprocally exchanged, but defendants once again wants to change the rules only for Ford, so there is mutuality and reciprocity for all the other plaintiffs but not for Ford, so what would happen is Ford has to scramble to get our requests together in three days and defendants were able to do so at their leisure without a date even being set now. These are obviously the types of obligations that should be mutual so that each party can kind of determine --

THE COURT: Could you slow down?

MS. KELLY: I'm so sorry -- can determine the amount of give and take during the negotiations.

Ford would be prejudiced by having to do this unilaterally in just a few days. Ford has tried to make efforts to expedite its transactional data requests but it has been impossible to complete this task because defendants have refused to engage in any mutual discussion with Ford of what the parties need from each other. There has been absolutely no back and forth process yet. Ford has been excluded from any of the ongoing discussions concerning transactional data until just recently, it was finally included in one call about two weeks ago, but there has been over a year's worth of communications back and forth between

the plaintiffs and defendants which obviously we were excluded from.

THE COURT: Well, you weren't in the case?

MR. KELLY: Yes, Your Honor, but when we came into the case we made it known obviously that we wanted to be included but we were excluded, there was some transactional communications back and forth in September, October, November, December, and we were excluded from those. So my point is just we haven't been able to get up to speed, and so defendants are claiming that it is too burdensome for them to make their request from Ford by the 15th, and for the same reasons it is too difficult for to us do that, so what we would suggest is let's just have a mutual date, let's put it off until March 15th, and let's both get together in that time period and make our mutual requests. It might be difficult to do it in a month but we are willing to do that, as long as it is mutual, as long as we can get together and have a back and forth with defendants --

THE COURT REPORTER: Please slow down.

MS. KELLY: I'm sorry.

THE COURT: You don't want to have to start all over so --

MS. KELLY: As long as we can get together and have a mutual conversation with defendants back and forth as to the appropriate parameters of the discovery, that is

something that I think that we can do by March 15th. It just seems to be the fairest way and the way that the defendants and plaintiffs have been doing it over the past year. Everything has been mutual.

Your Honor, there just seems to be a pattern here of trying to exclude Ford from full participation in the MDL. Defendants have done that, they have done it with their proposed supplemental discovery plan, and we request that the Court put an end to that and adopt Ford's proposed supplemental discovery plan, get us on the same track as everyone else, let's conserve everybody's resources and let's conduct this MDL the way it is to supposed be done with coordination amongst all of the groups.

Thank you, Your Honor.

THE COURT: Okay.

MR. SQUERI: Your Honor, if I could just address Ford's issues regarding the requested stay of discovery as to them?

First of all, it is hypothetical. We haven't served any discovery on them as of yet. Ford's characterization of itself as an absent class member and somehow that means that they should receive some special protection, it is not supported by the cases that they have cited, Your Honor. The cases that they have cited involved generally some type -- kind of abuse of the discovery process

that was being used by a defendant usually served on individuals as a means of limiting the number of class members. That's not what we are looking for here. We are looking to have basic Rule 45 discovery from Ford, reciprocal between defendants and Ford in the case. It is based upon the fact that Ford is a material witness in this case. It is not something that defendants like. Defendants don't like the idea of having to serve Rule 45 subpoenas on their customers like Ford and others, but we need to do it and we need to do it within a reasonable period of time. We can certainly talk to them about trying to coordinate, you know --

THE COURT: Well, you don't know the result of the motion yet.

MR. SQUERI: No, we don't.

THE COURT: So why would discovery go on before you know that?

MR. SQUERI: We don't know the discovery of the motion as to Ford, but we are talking about Rule 45 discovery from us to them, Your Honor, in order to move along with the process that we need to as we address class certification and other issues in the case.

THE COURT: Okay. All right.

MR. RUBIN: Your Honor, can I address the transactional data issues?

THE COURT: Yes.

MR. RUBIN: Again, Mike Rubin of Arnold & Porter speaking for the Fujikura defendants, but with respect to the transactional data I'm also addressing it on behalf of the -- all of the wire harness class-action defendants.

The issue here, Your Honor -- and let me back up. Ford's counsel noted that while they can't get it together in three days, these discussions on transactional data and coordination and providing and completing the meet and confers by the 15th of February, that was in December when we were on the phone, class counsel for the plaintiffs and Ford agreed that Ford to get up to speed pretty easily, class counsel accurately noted it is a couple letters that are a few pages long, it is a list of data. In reality, Your Honor, class plaintiffs have asked for virtually all of our transactional data. It is difficulty for us to imagine what else Ford wants or would want.

For Fujikura, we didn't sell anything to Ford. It is apparent that the transactional data they want involves sales by either other defendants to Ford or our sales to other OEMs and other direct purchasers. So it is unclear exactly what they are going to want, but if they want something that is different than the universe class plaintiffs have asked for, it is easy for them to say this is what we want, they should speak up or forever hold their

peace. It is not the same going the other way, Your Honor.

Ford has multiple hats in this litigation. They are, with respect to my clients, a party. We will have to take certain discovery as a party from them on transactions. In the direct-purchaser class action the direct-purchaser defendants and our experts are going to want certain types of transactional data from Ford, different transactional data is going to be relevant to the indirect purchasers -- both indirect-purchaser cases. Getting all of that together, pulling it together, and coordinating it with other transactional data that we are going to request from other OEMs, from GM, from Toyota, from Chrysler, doing that in a consolidated coordinated way, coordinating and making sure we get one single set of requests out that will satisfy the needs of our various experts in the various cases takes a lot of time and is not something that we as defendants are in a position to do with respect to Ford by the 15th, even back in December, that's simply not the process in the amount of time we had, it is not the order in which we usually do discovery in cases like this.

Ford chose when they decided to file this case, they could have filed it the same time as the class plaintiffs but they did not, so we would request very simply that Ford let us know if they actually think they are going to need additional transactional data so that we are not

holding up getting our transactional data to the class plaintiffs, holding up the litigation for the class plaintiffs because Ford won't come to the table and, Your Honor, they have been invited to the table, they were invited to the table for the meet and confer --

THE COURT: So you want them by February 15th but as to what you are requesting of Ford you want when?

MR. RUBIN: Ford doesn't want us to conduct discovery of Ford generally.

THE COURT: Right.

MR. RUBIN: So they are speaking out of both sides of the mouth on this point. We would like to serve discovery transactional data in a consolidated way, give them a single set of consolidated transactional data requests in an appropriate time so that Ford has to do the work once. That's what they want, that's what we want. When that precisely will be ready we are not sure, we are still working with our experts in the relatively near future, and for Fujikura it may be completely moot or our requests may be different depending on how Your Honor rules on the motion to dismiss. That motion won't affect what the class plaintiffs -- I'm sure the class defendants will need from Ford.

THE COURT: Right, and that's what I'm asking, what the class defendants will need from Ford, when will you have that together?

MR. RUBIN: One moment, Your Honor.

(An off-the-record discussion was held at 3:36 p.m.)

MR. RUBIN: Your Honor, I have conferred and we can be in a position to serve those March 15th.

THE COURT: Okay.

MR. RUBIN: That is for the class, Your Honor. For Fujikura we don't know what the scope of the case is or even if there is going to be a case, which makes it more difficult for us to serve our coordinated party discovery in a sort of ironic wrinkle.

THE COURT: Okay. Thank you.

MR. KELLY: Your Honor, defendants have said they can serve their transactional questions by March 15th. Ford has said that we can do the same. There really just doesn't seem to be any basis not to have that be the mutual date so we can mutually discuss the transactional data requests. While they have said that plaintiff --

THE COURT: Because the other class plaintiffs are doing February 15th, right?

MR. KELLY: And defendants are also serving their transactional data requests on plaintiffs by February 15th so, you know, for the same reasons they said we should be able to latch on to plaintiffs' requests, they should be able to hook forward into their requests from plaintiffs. They

are extremely broad, the requests that defendants have indicated with respect to the class plaintiffs are extremely broad. I can't imagine that there could be anything more they could want from Ford, so we both have that as our starting points so why can't we just take an extra couple weeks, a month, to formulate what we need from each other? It just doesn't make any sense why Ford should be the only party that is compelled to work on this short time frame when they are having reciprocity with respect to the other plaintiffs. Give us the same reciprocity.

I mean, the idea that Ford is talking out of both sides of its mouth is just simply untrue. We are trying to help accommodate them. Yes, would we prefer that all discovery be stayed with respect to Ford? Sure, but I understand that plaintiffs are trying to move things along, defendants are trying to move things along, so that's why we said yes, we will make our transactional requests on an expedited schedule.

THE COURT: It just seems to me that your transactional requests can't be that different from the class plaintiffs' transactional requests, and if they are going to be done on the 15th I think you should be done on the 15th of February, so I'm going to order that's the date for you to submit your transactional data requests. Defendants will submit their requests by March 15th to Ford. Okay.

MS. KELLY: Your Honor, if there arises a need if we realize down the line that there is a specific type of data that was missed for some reason, may we seek leave from the Court to serve a targeted transactional data request?

THE COURT: I have said before I would expect all of this to be done, but if you need something else that you didn't know about then you can bring it to my attention, certainly.

MS. KELLY: Thank you.

MR. RUBIN: Your Honor, speaking with my class-action hat on, class-action defendants' hat, on the February 15th date was put into the stipulation -- the proposed stipulation. The parties have been working to schedule meet and confers. As Yazaki's counsel noted, theirs isn't scheduled to occur until next week. I know a lot of defendants haven't scheduled and haven't completed meet and confers with Fujikura. When we spoke with plaintiffs several weeks ago a lot of items were left still for further discussion for the parties to get back together. The February 15th date may have --

THE COURT: Is that going to be extended for everybody?

MR. RUBIN: That's what I was going to propose.

THE COURT: That's what I was thinking. If you all do it the same time you can pick your own date, I don't care,

but you all have to be together on it.

MR. WILLIAMS: We have been discussing it. I think that we are likely to be done by the end of February. If you want to make it safe or easier for everybody so there's time for Ford to be a part, I would just say make it March 15th for everybody to be done for meet and confer and transactional data.

THE COURT: Okay. So we have just spent the last 15 minutes wasting our time. Okay. March 15th.

MR. RUBIN: I'm sorry, Your Honor. Co-counsel just noted that we are required to serve our data requests on Ford by March 15th. The February 15th date was when we were to complete the meet and confers. Obviously we can't complete the meet and confer until we served the discovery requests, so I just wanted to clarify that and make sure that was clear.

THE COURT: Oh, it is not clear at all. So you are going to change your meet and confers now to be after March 15th?

MR. RUBIN: No, Your Honor. For the class actions what I think we're jointly proposing is that instead of completing the meet and confers by this Saturday, just the reality of scheduling, we would like in the order, so we are not in violation of a court order when it is entered, to complete those meet and confers by March 15th, which would

include having Ford tell us before then if there is more that they want.

THE COURT: Okay. Ms. Kelly, what do you say about that?

MR. KELLY: That's fine with us, Your Honor.

MR. RUBIN: And then in terms of serving stuff onto Ford, our requests for transactional data both for the class actions would do that by March 15th. The open issue is Fujikura depending on your ruling on the motion to dismiss would also like sort of the -- in the event that we end up -- when we know what the case is actually about, if we need additional data having an opportunity to do that.

THE COURT: Okay. Submit a schedule to the Court in writing, please, so everybody knows what these dates are.

MR. RUBIN: Yes, Your Honor.

THE COURT: All right. In terms of Ford's position in this case as a coordinated party -- coordinated case, I guess I should say, versus consolidated, the issue which I will be very frank with you I have been struggling with is does Ford, in fact, get all of the discovery, that's just the issue that was argued that the other plaintiffs in the wire harness get or does Ford only get the specific discovery that it requests? It seems to me as a practical matter that Ford's conspiracy, if they are still in the case after the motion, that this conspiracy theory involves these other wire

harness plaintiffs, and that probably all of this other information is relevant, so I am going to order that Ford receive all of the information given to the other plaintiffs.

May Ford stand in the position to enforce discovery? I think I have to say yes, and the reason I have to say yes is that if Ford is coordinating, which we want, their discovery to the defendants then they have to have the right to enforce that discovery, otherwise you are going to be getting duplicative discovery, that is Ford would be -- have to send Ford's discovery to defendant in order to -- in order to maintain defendants' position that Ford cannot enforce the other plaintiffs' discovery. So I guess what I am saying, maybe I should say it that way, Ford may enforce discovery that it participates in, so if it gives a joint discovery request with the other plaintiffs to defendant, of course Ford can enforce it. If it is strictly the other plaintiffs who give the discovery to the defendants then Ford cannot enforce it.

MR. SQUERI: Can I ask a question about that, Your Honor? Would that include discovery that Ford would not otherwise have the right to seek? Would it include interrogatories, would it include request for production, would it include Rule 45 subpoenas, requests for documents that it wouldn't be authorized by law to get?

THE COURT: Well, if it is not authorized by law to

get, if you say it is not authorized by law to get, then you would -- Ford could not get it and you could -- or they could request it and you can file an objection and let me know why it is not authorized that they should get it. I will wait and see what that is. You gave some good examples why would Ford get certain information from other manufacturers that would be detrimental to the other manufacturers but it may be in the conspiracy that they are going to get some of that, I don't know, but I'm not ready to rule on that. You may maintain objections to what Ford gets, but other than that, other than things that are specific, anything you give to the others will be given to Ford. Okay.

Anything else on that, Counsel?

MS. ROMANENKO: Victoria Romanenko for dealership plaintiffs.

Just one more thing before we leave the supplemental discovery plan issue. With regard to the 45-day provision in the discovery schedule that Your Honor stated earlier, we -- plaintiffs have proposed one small clause that we did not hear defendants object to today, and that is absent agreement of the parties since the parties will be meeting and conferring at the same time as they will be working on their motions to compel. If the parties decide in ten more days we can get this done then we would just like to have the ability to make --

THE COURT: I don't think anybody would object to that, would you, absent agreement of the parties? If you agreed just as you did a couple minutes ago then that's fine. Okay.

MS. ROMANENKO: Thank you. And just one more thing, we would just like to note that dealership plaintiffs have been participating in every meet and confer with regard to discovery requests that were issued by the directs and end payers.

MR. SQUERI: Your Honor, just very quickly, we just want to make clear that whatever discovery we provide Ford obviously is subject to the protective order.

THE COURT: Absolutely, absolutely, and I was going to mention that before that you remember there is a protective order in this case. Okay. Please present an order.

Then Ball, we are going to complete Ball by 4:00, and we will start our next -- who is going to prepare that order, Ford -- do it jointly, that last order, Ford and Mr. Squeri?

MR. KELLY: Yes, we will do it jointly.

MR. SQUERI: Yes.

MR. SELTZER: Your Honor, Mark Seltzer of Susman Godfrey on behalf of the end-payer plaintiffs, and on behalf of the end-payer plaintiffs interim co-lead counsel, we

oppose Gordon Ball's motion to be appointed as an interim lead counsel in this case.

THE COURT: Where is Mr. Ball?

MR. SELTZER: Not here.

THE COURT: What?

MR. SELTZER: He is not here. He's a failure to appear, and there has been no contact with us, Your Honor, about the failure to appear. I submit, Your Honor, respectfully that in and of itself is sufficient grounds to deny the motion. This is not the kind of performance one would expect from somebody who wants to be appointed as a lead counsel in a case.

THE COURT: Excuse me. Molly, have we heard from Mr. Ball?

THE LAW CLERK: Just the pleading.

THE COURT: Just the pleadings. We haven't had any telephone message?

THE LAW CLERK: No. Do you want me to check with Colette?

THE COURT: Okay.

MR. SELTZER: So he's a no show, Your Honor.

THE COURT: He's a no show.

MR. SELTZER: Again, I say, Your Honor, somebody who wants to be appointed as a lead counsel in the case, not to appear on the motion for appointment as lead counsel that

says a great deal about that person's capacity and willingness to actually serve as a lead counsel in the case and provides sufficient basis to deny the motion. That said, there is zero good cause for this motion.

Merely asserting that he has got claims under Tennessee law that he claimed are better than the claims that we are prosecuting on behalf of the very same class members is not a sufficient reason to have somebody appointed as an additional lead counsel in the case.

THE COURT: The Court has read it. There is no sense in taking time. I have read it, and it is my decision that he not be allowed to be a lead counsel in the case. I will issue an opinion on it. Since he's not here I'm going to do an opinion.

MR. SELTZER: Very well.

THE COURT: Just so you know that's what I'm ruling.

MR. SELTZER: The last thing I would like to note just for the record, we did cite in our papers the Toyota case as an example of how an MDL actually works. Once the Court has appointed interim class counsel those are the attorneys who make the decisions and have the responsibility to make the decisions about what claims should be asserted on behalf of the class. In the Toyota case, for example, there were hundreds of cases that were MDL'ed to Judge Selna's

court in Santa Ana. After he appointed interim lead counsel, and I was one of them, we looked at the complaints that had been filed by various lawyers around the country and made the decision as to which claims should be presentence and which claims should be omitted, and Judge Selna expressly ruled that was our responsibility, that is the role of lead counsel, and that's what's happened here. This is exactly the way an MDL should work. And to allow somebody -- one plaintiff lawyer to say well, I have an additional claim, I should be appointed as lead counsel, that would lead to great mischief in the management of an MDL case. With that, Your Honor, unless Your Honor has any question, I will subside. Thank you.

THE COURT: You sound a little angry about this.

MR. SELTZER: Well, you know what, it is really an affront to the dignity of the proceeding for somebody to make this kind of a motion and then not have the courtesy to show up or call the court or call counsel and say I'm not going to show up or give a reason why they can't show up. In my experience that's absolutely unheard of. Thank you, Your Honor.

THE COURT: Maybe he knows it wasn't going to be granted and he didn't want to waste his time.

Okay. We have two more motions to go, as I understand it, the fuel senders, the direct purchasers and

the indirect purchasers. Who wants to go first? Okay.

MR. DONOVAN: Good afternoon, Your Honor. David Donovan on behalf of Denso. I will be addressing the direct purchaser -- the motion to direct -- to dismiss the direct-purchaser claim.

Compared to the plaintiffs in the wire harnesses case and even compared to what we think are the relatively weaker complaints in heater control panels and meters, which are under advisement by the Court, we think the Vitec complaint for direct-purchasers action stands apart in virtually every relevant respect.

All Vitec has here is a very narrow --

THE COURT: I just want to clarify what Vitec is. Is this -- well, I shouldn't ask you, right? You are the wrong person.

MR. DONOVAN: I went on the Internet and looked, Your Honor, and I think you know about as much as I do. It is a Michigan L.L.C., that seems to be about all you can figure out.

All Vitec has here, and I apologize if I'm pronouncing it wrong, I say Vitec, but all they have here is a very narrow guilty plea and a claim to have bought the product. If this complaint states a claim then it is hard to imagine any complaint involving a guilty plea that would not state a claim and that's not the law.

In the wire harness cases we had multiple defendants who allegedly controlled 70 to 90 percent of an alleged worldwide market for wire harness products, several of whom had pled guilty to fixing prices on billions of dollars in sales on as many as 11 different products to multiple auto manufacturers over overlapping periods who allegedly used their market power to hold prices stable during a period of declining costs, for which they were fined $800 million.

Here we have one plea by one defendant, Yazaki, for conspiring with one co-conspirator regarding approximately $1.6 million in fuel senders sales, not billions of dollars, $1.6 million in fuel senders sales to one OEM between 2004 and 2010 for which he was fined less than $400,000, and a plea by Denso also for conspiring with respect to just one automobile manufacturer but with respect to two other products, neither of which is fuel senders.

There is nothing in the Yazaki plea with respect to fuel senders regarding allocation of customers, I just wanted to make that point because it has come up in the other context today, nothing in there about that at all.

The plea, just to be clear, this is on page 8 of the Yazaki plea, in furtherance of the conspiracy the defendant, Yazaki, through certain of its officers and employees engaged in -- and I will allie (phonetic) here a

little bit, Your Honor -- engaged in meetings with a co-conspirator involved in the manufacture and sale of fuel senders. During such meetings agreements were reached to maintain the prices including price adjustments requested by an automobile manufacturer of fuel senders sold to an automobile manufacturer, A-N, one, in the United States and elsewhere.

There is nothing in that plea to plausibly suggest any impact on anyone other than that single OEM. Vitec does not allege that it ever sold anything to the OEM referenced in that plea. The Court in wire harnesses and the Courts in the other cases cited by Vitec in its opposition to our motion concluded that a conspiracy broader than a bare plea could be stated -- could be plausibly alleged based upon allegations about market power.

In SRAM, which Vitec cites at page 8, the top nine producers, who were defendants, controlled 79 to 84 percent and maintained uniform prices. In BMG the defendants controlled more than 80 percent of digital music sales, and there was a bunch of other facts alleged. In Carbon Black a majority controlled by defendants. In the DIPF case, which Vitec cites, there were detailed facts demonstrating collusion in the market in which the defendants controlled 90 to 100 percent of relevant sales. The same thing is true in the chocolate case, and in aftermarket filters and in flash

memory in which the defendants controlled 75 percent, 80 percent and 90 percent respectively of the markets.

What's alleged here? Unlike wire harnesses, not a single allegation about market power, nothing. They don't even allege what the market is. In what market did Vitec buy fuel senders? You will read the complaint front to back and you will not find an answer to that question. Did they buy in the United States? Did they buy in Japan? Did they buy in Europe? Is it a worldwide market?

THE COURT: But is there something about it's only like .07 percent in terms of the total sales for which Yazaki was fined in this case, is that --

MR. DONOVAN: Yes. If you look at the Yazaki plea with respect to the products they pled guilty to and the amount of commerce with respect to each of those products, for wire harnesses I believe it was $2 billion in commerce. For -- what is the other product? Instrument panels it was $2 million -- 2. -- actually I have the numbers here, $73 million for instrument panel clusters and $1.6 million for fuel senders, that was the total volume of commerce it involves, 2 billion, wire harnesses; 73 million, panel cluster; 1.6 million, fuel senders. It is just -- if you look at the total fine of $470 million, Your Honor, you can figure out which portion of the fine was allocated based on the relevant volume of commerce. So the total fine to Yazaki

related to the sale of fuel senders would have been under $400,000 out of a $470 million fine.

Again, with respect to the market, Vitec alleges nothing unlike wire harnesses about what the market was. Probably more importantly, Vitec doesn't allege anything about how many suppliers there were. How many competitors are there -- were there in the United States whenever Vitec bought its fuel sender from Denso or Yazaki, whenever that was, they don't say. How many suppliers were there of fuel senders in that market at that time? 10, 20, 50, 3, there is no telling from this complaint.

How much of the market, whatever that market was, was controlled by Yazaki or Denso? 2 percent, 50 percent? There is no telling.

How did prices behave during the period that Vitec bought its fuel senders from whoever they bought full senders from? Did Vitec, in fact, pay more for fuel senders from Denso or Yazaki than it paid from any other of the many suppliers of fuel senders from whom it could have or presumably did buy fuel senders? There is -- the only thing in this complaint about market power is some boilerplate about barriers to entry and price elasticity. I won't -- well, yes, I will.

If you look at the complaint with respect to the allegation about price elasticity, it actually doesn't even

make any sense. It is paragraph 47. 46 says when a seller of goods and services can increase prices without suffering a reduction in sales pricing is inelastic. Okay. That makes sense.

47 says OEM must use fuel senders, because you have to have a fuel sender in your gas tank otherwise you can't tell how much gas is in your car, therefore price is highly inelastic. That is a complete non sequitur. It doesn't even make sense. The Court doesn't need to give credence to allegations that don't make any sense. Pricing would be inelastic if there were only two or three competitors. If Denso and Yazaki controlled the market then Denso or Yazaki could raise the price of fuel senders at will because people have nowhere else to go and they have to have a fuel sender. If there are 12 other competitors selling fuel senders at the time then the price is not inelastic.

THE COURT: There is nothing in that complaint that shows that defendants could influence the sale of --

MR. DONOVAN: Nothing, absolutely nothing.

THE COURT: Okay.

MR. DONOVAN: What do we know about Vitec? You asked the question earlier, Your Honor. It is a Michigan L.L.C. that supplies fuel tanks that contains fuel senders to somebody. It bought at least one fuel sender from Yazaki or Denso, we don't know, at some point since January 1st, 2001.

That's it. Nothing about who else it bought fuel senders from, nothing about whether it bought any fuel senders between 2004 and 2010, which is the time period of the Yazaki plea regarding fuel senders, nothing about who it sold to, nothing about the prices it paid ever for fuel senders or how those prices were set, did it buy them in a catalogue, did it call the dealer down the street, did it call Denso, we have no idea how prices were set for the fuel senders Vitec bought, or whether it paid more for fuel senders from Yazaki or Denso than it paid for fuel senders from other suppliers.

THE COURT: How about -- I'm forgetting, how about -- we know what the Yazaki sales representative -- or percentage. What about Denso?

MR. DONOVAN: There is nothing in the complaint?

THE COURT: Nothing.

MR. DONOVAN: Nothing, absolutely nothing. Vitec knows whether it was ever directed to buy a fuel sender from any particular supplier. Vitec knows whether any OEM, in particular the OEM referenced in these pleas, and I think in the sealed briefs the parties have made it clear who that OEM is, Vitec knows whether any OEM ever directed Vitec to buy from Yazaki or Denso. And Vitec knows whether any OEM ever told it the price that Vitec had to pay. Vitec alleges none of those things and they certainly cannot state a claim based on an alleged injury to somebody else, and that's all they

have tried to do here.

We agree that Vitec is not limited by the plea agreements, it is not limited by the Yazaki plea agreement, it is not limited by the Denso plea agreement. Vitec can plead and allege anything it wants unless, of course, all it has is the plea and that's all it has got. We are also not insisting that Vitec plead a highly detailed set of facts on the price, method and nature of our alleged collusion. We are just insisting that Vitec plead something beyond the face of the pleas to plausibly suggest the existence of a conspiracy that impacted literally all sales of all fuel senders to all buyers in the United States as it has alleged here.

THE COURT: What about the injury to Vitec?

MR. DONOVAN: That's my next point, Your Honor. Vitec has to plead something to link its purchases to some wrongdoing by Denso and Yazaki. Now, on that point I went through Vitec's brief last night and they say the well-pled facts in the complaint allege that plaintiff purchased fuel senders directly from one or more of the defendants at prices that were higher due to anti-competitive conduct. I thought to myself, well, that's certainly the issue but where do you find that in the complaint, so I read further, and they say here on page 5, the complaint contains numerous factual allegations establishing that plaintiff was harmed by a

conspiracy to rig bids for, allocate the supply of and fix prices for fuel senders. Again, it is a nice conclusory sentence but where is the beef?

So I get to page 13 and they lay it out there and they are really pretty bold about the argument they make. The heading is complaint sufficiently alleges that plaintiff was injured as a direct result of defendants' conspiracy to fix prices. And, again, I will skip over a few words, but here is what they argue on page 13, plaintiff plainly alleges it was injured, the complaint states that Vitec purchased fuel senders from one or more of the defendants, it alleges that defendants engaged in that conspiracy that impacted the bids submitted to OEMs and also the prices paid by all other direct purchasers of fuel senders, and the complaint alleges that the plaintiffs paid a higher price than they otherwise would have paid and therefore were injured. The law does not require anything more.

The law requires everything more. That is completely conclusory, and if that's all it takes to state a claim then all we need is a guilty plea, and that's not the law.

I mean, simply put, Your Honor, standing and injury are not pled by asserting that you have standing and were injured. You have got to plead some facts to establish that the events, the wrongdoing you have alleged, in fact impacted

you, and Vitec has not done that.

In static control in 2012 the Sixth Circuit squarely held that the mere allegation of conspiracy and injury is entirely conclusory, that's all you have got here, and that it is not enough to plead causation. What's the market? What's the plaintiff's role in the market? What place did the plaintiff pay? How is that price that was paid by the plaintiff impacted by the alleged anti-competitive behavior? The plaintiff in static control alleged numerous facts to try to link its purchases to the defendants' conduct. The Court found those facts did not establish the link. Here there are no facts, there is just the plea, there is just a plea about what Yazaki did with respect to sales to one OEM and its engagement in that activity with one co-conspirator, there is nothing else, nothing at all.

Your Honor, we will rest on our papers with respect to the statute of limitations and the failure to state a claim for injunctive relief with just one -- if I could just say one fact that relates to both of those issues? Vitec alleges that it bought at least one fuel sender from one of the two of us or perhaps both of us, it doesn't say, at least once since 2001. Vitec knows when and from whom but it has pled nothing to establish either that its purchase was within the limitation period or even that it occurred during the time of the conspiracy. If its purchase was before the

conspiracy, which according to the Yazaki plea is 2004 to 2010, then neither -- there would neither be causation nor any reason to believe any affirmative act of concealment, neither of which is plead. Likewise, any allegation of any business with either Yazaki or Denso in the last decade, absent that, there is no showing sufficient to give Vitec any basis to seek an injunction.

THE COURT: Okay.

MR. DONOVAN: That's it, Your Honor. I think Vitec plainly has no claim and its claim should be dismissed.

THE COURT: All right. Response?

MR. KOHN: Thank you. Good afternoon, Your Honor. Joseph Kohn for direct-purchaser plaintiffs.

I don't want to repeat the entire approach we took at the wire harness argument in terms of the categories of allegations, at the same time we don't want to sell short the fuel senders class, which is a different class and a different case.

With respect to the case law, this is what there is, there is no case which grants the relief that the defendants propose. There is no case in the antitrust field post-Twombly where there is a guilty plea of any shape, kind or description where the complaint has been dismissed in its entirety with prejudice, and that's what the defense is asking.

THE COURT: So what do we know, what do we know about your client -- who is your anyway?

MR. KOHN: Vitec is a Michigan company, it is operating, it is in business.

THE COURT: What does it make?

MR. KOHN: It makes the fuel tanks for automobiles. It is a speciality manufacturer, it buys fuel senders to put into the gas tanks, and it is doing a healthy --

THE COURT: Who does it buy its fuel senders from since it seems like there is some real iffy it may have bought it from one --

MR. KOHN: We don't think there is, Your Honor. They bought from the defendants and that's alleged in the complaint three different ways. Plaintiffs buy from the defendants.

There is no case law, Your Honor, that I have seen in the antitrust field, and there is a Twombly industry now I call it after the Twombly decision where any plaintiff has been required to give invoice dates, purchase dates, there is no such case.

THE COURT: What's the impact alleged in your complaint on your client?

MR. KOHN: The impact, Your Honor, is very straightforward. It is the same as was alleged in Ice, which Judge Borman upheld, it is the same as Your Honor upheld in

wire harness. You buy product in a price-fixed market you are clearly the consumer of that product. This is not an exotic market such as that ATM case which defendants rely upon where, I'll be darn, I have read that case five times, I can't understand what the market was or who was charging whom for what in that case. It is not that kind of case.

In every cartel price-fixing case the allegations of injury are made the way we have made them. Your Honor upheld them in the wire harness case. There was several paragraphs at page -- it is asterisk page --

THE COURT: But here we know --

MR. KOHN: -- 9 of the wire harness decision.

THE COURT: Here we know there's -- I mean, there is a plea so we know that there is a price fixing, right, at least from Yazaki?

MR. KOHN: Correct.

THE COURT: But it seems to be just such a small, small part of the market?

MR. KOHN: No, Your Honor. Defense -- when counsel said we don't know what the market is, we don't know who Vitec bought from, really, they don't have purchase records of their customers? I mean, they chose to proceed under a Rule 12 motion. There are other rules. If you don't think there is a purchase you can convert a Rule 12 motion into a summary judgment motion, you could attach an affidavit from

the salespeople at Denso or at Yazaki and say we have no record of purchase. Plaintiffs allege we purchased from the defendants during the class period, that's what we alleged in the Packaged Ice case before Judge Borman post-Twombly, there was no requirement, no ruling that you had to attach invoices or say on what date you purchased ice from which of the defendants.

The impact we allege in paragraphs 62 and thereafter and then again in paragraph 69 of this complaint, the methodology by which the suppliers, the non-OEMs, are also affected by the bid rigging to the OEMs. Those are the same type of allegations as Your Honor upheld squarely in wire harness. There are two or three paragraphs where you go through that even though the guilty plea talks about the bid rigging being aimed at a manufacturer and plaintiffs are not manufacturers, they supply the OEMs, they are nonetheless direct purchasers of these products and we have alleged the methodology by which that market is affected. We make the same allegations here which were upheld there.

There is no mystery in the Sixth Circuit decision, Your Honor, in static control, we briefed it as well, I think it was pages 13, 14, 15 of our brief. Those are the classic elements of --

THE COURT: How far do you go -- I mean, it is like -- I mean, this complaint looks very limited to me and

it is almost like could we pull in every car part here and say because there is price fixing in alleged 28 parts that there must be in all parts?

MR. KOHN: No, that's exactly what we have not done, Your Honor.

THE COURT: But you are getting there, aren't you?

MR. KOHN: No. We did not do it in wire harness when there was initial discussion about plaintiffs are alleging an overarching conspiracy about all products, no. We had a claim for people who purchased wire harnesses who were in the supply chain. This is a case not for all products, this is a case for fuel senders.

And if I could maybe speak a little bit more to the categories of allegations that we submit nudge us across the Twombly line, and that's what we need to do.

The first, of course, is the guilty plea of Yazaki. Now, Your Honor already ruled that it is improper to dismember the complaint into its component allegations. We think now there is a process where they are dismembering the guilty plea. What does the Yazaki guilty plea mean? It is a factual admission of wrongdoing by this defendant with respect to this product. That it -- not only is it an allegation in a complaint that we believe they had meetings, they have admitted it, it is in evidence, I could take that guilty plea and introduce it as our first exhibit to the

jury. I mean, we are so far beyond the plaintiffs saying we thought you folks might get together at trade associations.

The guilty plea speaks about meetings, plural, communications, plural. These are facts that nudge us across the line. Again, I would say Twombly, the quote from the Supreme Court, I think it is pages 561 and 564, state there were no allegations of any fact in Twombly, the plaintiffs simply relied on the parallel conduct which was created by operation of law and from that decision where the Court said a complaint that alleges no facts, and that is a quote from the Supreme Court, does not meet your Rule 12 obligation, from that we have had, as I said, the Twombly industry was born.

We talked about opportunities. Your Honor cited in the wire harness, opportunities to conspire, and I think you made -- not only did plaintiffs allege opportunities but obviously the defendants availed themselves of those opportunities, I think Your Honor wrote, so the guilty plea also talked -- gives you evidence, admitted evidence, of opportunities to conspire, which is itself another category.

Now, the Denso guilty plea, it relates to other products, and our colleagues I think on the indirect case may have been a little more assertive about the ex para issues. We certainly believe they are properly inferred from these complaints, but they pled guilty to two other products yet

Yazaki's pleading to fuel sender conspiracy. I think your court -- the Court can take notice and inference of the cooperation in the ex para procedures.

We also I think rely at this stage, which we did not in wire harness, which was the first of these matters, the line of cases as in SRAM. 580 f. supp. 2nd 896, Northern District of California, where the court said it is part of the plausibility analysis under Twombly if there is price fixing in a related product. We didn't argue that in the first case, wire harness, but this is now the fourth case. And Denso --

THE COURT: Wait a minute. Is that how you are getting Denso in there is because there is price fixing in a related --

MR. KOHN: Your Honor, that is a factor that the Court can look at. If it is -- and it is not the only factor. We have admissions, as I say, of the meetings and opportunities to conspire.

THE COURT: How do you get Denso and Yazaki tied up?

MR. KOHN: Because they are --

THE COURT: Fuel sender suppliers, is that basically it?

MR. KOHN: Yeah, and the ex para inference that can be drawn from the other products that Denso is cooperating

with, which is recited in their guilty plea, and they also now appear in not only some of the first products but in many, many others, so that we do rely on that line of cases as an additional factor that the Court can look to to determine, again, the plausibility of the case.

Now, is it plausible in the conspiracy -- they say, well, it is only one manufacturer in the guilty plea. Now, of course, there was similar language in a number of the guilty pleas in wire harness which, of course, the Court considered and ruled on with respect to those complaints, but is it plausible that they would have just a one-off price fix for their best customer, is that plausible, or is it plausible as we have alleged in our paragraphs 62 through 69 that that bidding process was a mechanism for controlling price in the market for them having that price apply to the other? Was this just a rogue employee who did this on fuel senders? Or what about the other 15 rogue employees who have dealt with all of these other products or the other 10 or the other 4?

Your Honor, I think at this point we think it is plausible that there is an epidemic of price fixing in this industry. You have 28 cases, the biggest investigation, and yet we didn't make these arguments quite so stridently in the first case but now we have seen the development.

THE COURT: Now you sound like the Department of

Justice.

MR. KOHN: This is not just a one-off, and lo and behold Yazaki is in a number of the earlier cases and Denso is in a number of them and moving forward. But what is plausible, I think I have beaten the example of the bid rigging to the big hotels in the city that might affect then the prices paid for the distributors to smaller...

Let me try another example. What is plausible? You have some family over, maybe some young nieces and nephews over for the holiday. You come into the kitchen and two or three of them are in the kitchen, one is on the counter, there's three cookie jars. One has a hand in the oatmeal raisin cookie jar, the other one is standing there next to him. There is also the chocolate chip cookie jar and another one. Did you take a cookie out of the cookie jar you ask little baby Yazaki? At first they will deny it, of course, as any kid, no, I didn't do it, but then they admit it. Okay. That's the guilty plea. But Yazaki's friend Denso is there too. Is it plausible that Denso also had a cookie out of the cookie jar? Is it plausible that you might want to -- you know, would you have enough basis to ask them to open their mouths and see if they have crumbs or to ask who made the cookies how many did you make? Is it plausible they were taking the oatmeal raisins that they might have also been dipping into the chocolate chips? I mean, I think

that's far more plausible than this notion that we just had some one rogue employee who made a conspiracy to fix fuel senders to one customer. Of course, all the other law about how guilty pleas are negotiated and pled down, et cetera.

Your Honor, a second category of evidence which you cited and discussed at page 6 of the wire harness decision, I'm referring to those asterisk pages 6 in the CCH versions. You wrote this, quote, the scope of investigations by government entities, as well as the global coordination of the investigation, was itself another factor in favor of the plausibility of the conspiracy. That was then. This is now. The scope of that investigation has only been validated, has only been shown to be more plausible than it was when we first addressed the wire harness case.

Third category of allegation, we do make economic allegations about the market, and defendants have seized on this argument, and I think it is kind of a savvy move, I would call it like a judo move or a jujitsu move to try to use your opponent's momentum against them, because in wire harness you were able to identify four or five or six different factors, it is not a requirement that we have to have those same four or five or six in every single case, we only need to go back and be plausible and push over the line.

We had the same arguments in, you know, Packaged Ice. The same law firms said we didn't have a claim in

Packaged Ice, and now they say well, if only you have the evidence you had in Packaged Ice. These are the same people who argued that we didn't have a claim in wire harness but, you know, now to say because we don't use some -- or we did not specifically use the words or make the allegations about market concentration, we did specifically allege, this is paragraphs 43 to 47, specific allegations about difficulty with barriers to entry, and that was cited separately as a separate factor by Your Honor at both pages asterisk 7, asterisk 8 of wire harness. Barriers to entry stood on its own as a separate plausible economic allegation separate and apart from an allegation about market concentration.

The allegations about inelasticity which counsel mentions obviously are in the complaint. We use the language of cartel in those allegations, and they do make sense if you, in fact, have the market concentration but we didn't utter magic words. Now, are they saying only if we had a little pie chart --

THE COURT: But you have no allegation of market concentration?

MR. KOHN: Well, sure, if you have a cartel that exercises -- that can control pricing where that demand -- the very paragraph being quoted that implies that you have that power.

THE COURT: Yes, but as to these defendants?

MR. KOHN: Yes, yes, Your Honor. I would point out it is not some kind of magic words. Indeed, I believe the end-payer complaint, I haven't studied it, does make an allegation about market concentration, and lo and behold they are moving to dismiss that complaint too.

So -- and I don't think they are seriously saying if only you had that market concentration chart. Now, remember we spent some time at the wire harness argument, certain defendants tried to take the chart apart and say we are not even on the chart, how could we be included in the conspiracy? So there is no one magic word or --

THE COURT: Okay. I'm going to have to cut you short because I need to hear from the indirects.

MR. KOHN: Yeah, but we do believe when you have all of those categories, again, we don't need to show everything in every case identically, we don't need to have our own success in the other cases held against us, but we think we have covered that.

One quick note, Your Honor. There were several cases they did cite with respect -- in several recent Eastern District of Michigan cases on pleadings, and they were exhibits -- actually Exhibits D and F to theirs. These were two-page decisions in pro se cases in this mortgage foreclosure mess where some homeowners had sued everyone who ever had or transferred the mortgage, and then they attached

the last mortgage and they obviously had no claim against the other mortgage companies. These are good lawyers, these are good antitrust lawyers, and if there was case law out there that said we had to attach invoices or cite specific dates when we made purchases they would have those cases. And I think your decisions in wire harness stand as the -- and Judge Borman's decision in Packaged Ice stand as the leading cases on plausibility under Twombly in this district and would take precedence over those cases.

THE COURT: All right. Thank you.

Mr. Donovan, briefly.

MR. DONOVAN: Very briefly, Your Honor.

Plaintiffs' counsel dances as well as anyone I have ever heard, but he didn't answer your question. You asked him several times to show how the events pled to in the Yazaki plea agreement linked to Vitec, and he never answered that question. He said well, you buy a product in a price-fixed market you are a consumer in that market. Well, that begs the question whether Vitec bought a product in a price-fixed market. The only facts they have alleged are the Denso and Yazaki fixed prices to the OEM in the Yazaki plea agreement, the one OEM for 1.6 million worth of fuel senders. That's all they've got.

He points to paragraph 62, and it is very -- very simply it says, 62, the winning price in an RFQ is used when

a supplier to that OEM, who is not part of the process, purchases fuel senders directly from the winning bidder for incorporation into a product sold to that OEM. That OEM selects the winning bidder, that OEM directs the supplier to buy fuel senders from that bidder at the winning price and the OEM supplier issues a purchase order.

Vitec doesn't allege it was any of those things. Vitec never says that the OEM -- the OEM in the plea, which I can't say the name out loud in court, that that OEM -- that it ever sold to that OEM. It never says that that OEM ever directed it to buy a fuel sender from anybody including my client or Yazaki, and it never says that that OEM directed Vitec the price to pay. No part of that link, and they would have to show -- allege facts, at least allege that those things were true, it is alleged no part of that to be true.

Paragraph 69 is the other one, and that's completely conclusory. He's identified 62 and 69 as the nub of his complaint.

THE COURT: What about the fact we have a plea and counsel says in these cases there has never been a case where there has been a plea where the case has been dismissed?

MR. DONOVAN: With prejudice. There has been lots of dismissals where plaintiffs have tried to allege things broader than a plea, and the courts either allowed it to be pled based on additional facts alleged in the complaint or

they have dismissed it with a chance to re-plead to show up with the additional facts that justify a claim broader than the plea, but it is not the case that no complaint thas has relied solely on a plea has never been dismissed.

THE COURT: Okay.

MR. DONOVAN: I'm not aware of one being dismissed with prejudice, although frankly we did argue for that, Your Honor, and I have no problem asking for that.

Finally, Your Honor, one last thing. He points back to the barriers to entry and says, look, we allege barriers to entry in wire harnesses, and we have alleged barriers to entry here. Barriers to entry were relevant in wire harnesses because they allege that the defendants controlled 90 percent of the market. If there are 200 sellers of fuel senders and there's high barriers to entry and Denso and Yazaki get together and try to set prices, so what, there are still 198 other people out there to buy fuel senders from, and that's the piece that is completely missing in this complaint. We are not trying to dismember their complaint, Your Honor. I'm trying to find something in it to talk about, something concrete. If anything, it appears that the plaintiffs are trying to dismember your decision in wire harnesses, and we don't think that's proper either.

THE COURT: Thank you. Indirects?

MR. KOHN: If I could just say, Your Honor, with

the conclusion of our motion some of us in the east coast are trying to get back before a snowstorm which is hitting, so if we do walk out the door -- normally we would stay until the conclusion of the hearing but that would be the reason.

THE COURT: I understand.

MR. KOHN: Thanks.

MS. FISCHER: Your Honor, I have some handouts. May I approach?

THE COURT: You may. If you have to leave to catch a plane, and I could see why you don't want to miss it, go ahead.

MS. FISCHER: Thank you, Your Honor. Michelle Fischer on behalf of Yazaki, speaking on behalf of both defendants in fuel senders.

My focus today will be on two things, obviously differences and/or similarities as relevant between this case and wire harnesses, and a limited number of issues that I have not previously addressed in oral argument in either wire harnesses or instrument panel clusters starting with the plaintiffs' claim for injunctive relief here.

Your Honor, this is a fuel sender. It costs less than $5. That's the cost of the entire fuel sender, not the cost of any alleged overcharge on a fuel sender, yet plaintiffs' theory in this case is that, first, although they can point to communications between just two fuel sender

suppliers involving just $1.6 million in total sales to a single OEM, the defendants' communications somehow resulted in overcharges on every single sale of every single fuel sender to every single OEM since as far back as March 2001 according to the auto dealers and March 2004 according to the end payers. That's the first part of their theory.

The second part of their theory is that their supposed overcharges on this less than $5 part somehow affected the price that they paid links down the distribution chain for cars costing tens of thousands of dollars and in some cases many tens of thousands of dollars. That's the conspiracy that is alleged in this case, Your Honor.

Yet unlike their complaints in wire harnesses here plaintiffs have pled only very limited conduct involving a small, very inexpensive part with very few sales to a single customer. That is simply not enough to support either the incredibly expansive conspiracy they have outlined in their complaints or the injunctive relief they are seeking.

Specifically in wire harnesses this Court allowed the plaintiffs' claim for injunctive relief under section 1, their only federal claim, to proceed, quote, in light of the length of the conspiracy alleged and the market conditions pled, unquote. That's at page 31 of the West Law version.

But here the Court can look to neither of those things because they pled neither as lengthy a conspiracy nor

facts even remotely close to those that they pled in support of the market conditions on which this Court relied in wire harnesses. Plaintiffs' counsel certainly knows how to plead facts, and while we just heard them try to dismiss them, look at what they did -- look at what the indirect purchaser plaintiff counsel did in wire harnesses as shown on page 2 of the handout I just gave you.

Here they plead nothing like that. In wire harnesses they set forth detailed factual allegations regarding who the suppliers in the market were, what their respective market shares were, and they supported their claims that the market was highly concentrated by showing that six defendants accounted for over 70 percent of sales in that market. They also pled that five of those defendants had pled guilty to wire-harness related conduct.

Here what do we have? They name just two defendants, only one of which pled guilty to fuel senders related conduct. We know nothing about the percentage of sales for which either one of them account. We know nothing about who or how many other fuel sender suppliers there are, and we know nothing about to whom either defendant sells fuel senders beyond the single OEM referenced in the plea and identified in the redacted portion of their complaints.

THE COURT: Now they say that they dominate the fuel sender market?

MS. FISCHER: You are correct, Your Honor, that the end-payers' complaint does say that they make -- that Yazaki and Denso dominate the fuel sender market, but that's a conclusory allegation entitled to absolutely no presumption of truth. It needs to be supported by factual allegations, and I refer the Court to Twombly and Iqbal for that.

Similarly the auto dealers allege only that, quote, a small number of manufacturers supply fuel senders to OEMs, but they pled again not one fact in support of that. We have no idea how many a small number is, nor do we even know for what market share any one of them accounts. For all we know, even if there is a small number of fuel sender suppliers, again, a conclusory assertion that is not entitled to any presumption of truth, one or more of those other suppliers may, in fact, be the 800-pound gorilla of the industry rendering anything that Yazaki and Denso might have talked about incapable of affecting the industry or prices in the industry as a whole.

Beyond that, all the plaintiffs do is toss around antitrust buzz words like inelastic demand and high barriers to entry. We just heard about barriers to entry, and I want to talk about that. Here they point the court to the fact that Yazaki owns patents, unidentified patents, on component parts used in fuel senders, but they don't plead what those patents cover, they don't plead where or when the patents

were issued, and most importantly they do not plead whether that patented technology has substitutes for it.

The U.S. Supreme Court has made eminently clear that just because you have a patent doesn't mean that there are barriers to entry or that that patent constitutes a barrier to entry, nor does it support the existence of market power in the patent by the patent holder if there are other alternatives to which buyers can turn.

And remember, Your Honor, in terms of assessing whether or not there are substitutes for this patented technology this is about as low tech as it gets. It is a few wires, an arm and a float. Without the wires it is pretty close to the float in your toilet.

So here, Your Honor, the plaintiffs have pled neither the market conditions nor the lengthy conspiracy to which this Court pointed in denying the defendants' motion to dismiss plaintiffs' claim for injunctive relief in wire harnesses, and this is particularly fatal here because since the argument in wire harnesses the Supreme Court came out with another case called Clapper, which heightened the standard for pleading -- for pleading the right to injunctive relief. Specifically we already knew that the plaintiffs must allege particular and concrete allegations of future injury, but in Clapper the court made clear that they must plead facts to demonstrate that any threatened future injury

is, quote, certainly impending, unquote.

They haven't done anything like that here. They make absolutely no factual allegation supporting a conspiracy that continues to the present day or that shows that the prior conspiracy is likely to reoccur. In fact, the only factual allegation they refer to, the ones redacted, refer to conduct that happened about a dozen years ago relating to a single OEM. What they basically plead is at best lingering monetary injury without any ongoing threat of recurring violations, and that's not good enough under Supreme Court precedent, especially when their other allegations undermine their assertion of continuing conspiracy or impending harm.

What other allegations am I referring to? Well, they affirmatively plead that the defendants have been subjected to criminal investigations in multiple jurisdictions that would have alerted their customers to the conspiracy, and that, in fact, led to plea agreements that require the defendants' continuing cooperation with the DOJ under the threat of subsequent criminal prosecution. And their argument is further undercut by the fact that their argument -- that the conspiracy might resume and cause them harm is further undercut by the public details, for example, of Yazaki's very hefty compliance program, and the fact that the sentencing judge for Yazaki expressly acknowledged, and I'm quoting, that the size of the fine and the many

consequences that go even beyond the fine imposed here will be quite sufficient to deter the company from making this mistake in the future and will deter others as well.

Neither of those things were brought to the Court's attention, I concede, Your Honor, in wire harnesses. Rather the Court looked to the fact that we pointed to the investigations, the pleas, the orders and the publicity surrounding them, and you found them insufficient but you found them insufficient again in light of the length of the conspiracy alleged and the market conditions pled, but now in fuel senders the defendants have pointed to more and the plaintiffs have pointed to less in a situation where the standard has been clarified. Under that standard the plaintiffs have not demonstrated their right to injunctive relief and that claim should be dismissed in its entirety.

Your Honor, the same pleading failures that I just referred to also require dismissal of plaintiffs' complaint alleging this incredibly broad conspiracy in their entirety for failure to meet Twombly and for failure to establish standing, both antitrust and article 3. Now, as you know, under Twombly we have been through this, basically they have to plead sufficient facts, facts to allow you to draw the reasonable inference that the defendant is liable for the misconduct alleged. Here, as you just pointed out, that's a very broad conspiracy. It is a conspiracy to fix the prices

of every fuel sender sold to every OEM since back as far as March 2001. In wire harnesses you said they -- the plaintiffs satisfied that by pleading specific facts regarding the market and the defendants' place within it.

What do we have here? Here all we know is that defendants are alleged to be two out of an unknown number of suppliers with unknown share selling in unknown market conditions. Plaintiffs basically offer only bare, unsupported assertions, which the Supreme Court has made clear are not entitled to any presumption of truth, and to understand why this is and, in fact, must be the rule, one has to only look at paragraphs 182 and 185 of the auto dealers' complaint. In those paragraphs the auto dealers claim that fuel senders are, quote, pieces of sophisticated electrical equipment that comprise a non-insignificant portion of the cost of a vehicle. Their failure to plead facts beyond the conduct addressed in the plea and in the one example -- in the exemplary examples of conduct pleaded in their complaint means that they have failed to give this Court any basis to find that the very broad conspiracy that they have alleged is plausible, and they have failed to show the Court that they have nudged their complaint over the Twombly standard, and for that reason the complaints should be dismissed in their entirety, and for the same reasons because there is nothing in their allegations that would

permit the conclusion that any conspiracy among Yazaki and Denso impacted all buyers of all fuel senders of every kind during the relevant period. They have failed to show or even suggest that every one of them suffered injury at all, much less injury that you could fairly trace back to the conduct of these defendants, but that's exactly what is required under article 3, standard and antitrust standing, and for this reason as well their complaint should be dismissed.

Your Honor, this is not a case like LCD where the product at issue accounted for 60 or 70 percent of the final cost of the finished product. It is not like flash memory where it was an overwhelming majority. This is a tiny fraction of the cost of a finished vehicle, and at some point it is just not reasonable to assume pass through, and that is what the plaintiffs are asking you to do.

THE COURT: Okay. Thank you. Response?

MS. ROMANENKO: My colleague, Mr. Reiss, will start but I have a couple of slides. I'm just going to note before I hand them out that they contain highly confidential materials, so they can only be seen by this Court and attorneys in the fuel senders case.

THE COURT: All right.

MS. ROMANENKO: May I approach the bench?

THE COURT: Yes.

MR. REISS: Will Reiss for the end-payor

plaintiffs, and I'm going to be speaking on behalf of the indirect-purchaser plaintiffs as well, and the dealers are going to speak after me and they are going to address some of the state-specific issues and some additional issues that I don't cover.

I'm going to do my best to be brief this afternoon. I realize I have the dubious distinction of arguing last. I have to tell you standing here again today I haven't heard anything new. I mean, we have heard the same argument and I think it bears noting that Yazaki and Denso and their counsel were defendants in the wire harness case and they raised these same arguments in the wire harness case. They are great lawyers, I will give them credit, they can put new spins on these arguments and new slant, but they are the same old arguments, and the Court rejected these arguments. And, you know, they are trying to find a distinction here. They are really trying to grapple hard how can they distinguish this case from wire harness because they recognize the precedential value of that case, and so they grapple onto this distinction in the guilty pleas and they say well, in wire harness we had a number of defendants who pleaded guilty to price fixing wire harnesses for multiple OEMs, and in this case we have a Yazaki guilty plea and they only admit to price fixing just fuel senders for one OEM in this case, and so somehow that's different but, Your Honor, I would say that

that's a distinction without a difference because we have multiple facts that we allege that render the conspiracy plausible.

First and foremost we have an express agreement -- we allege an express agreement. We have a guilty plea from Yazaki, that's a smoking gun, that's a concession that they pleaded guilty to price fixing in the conspiracy but, Your Honor, I would submit that we have more than that, our case is actually better here than in wire harness because we allege we have express allegations relating to Denso and relating to Yazaki with respect to their conspiratorial conduct, with respect to their price-fixing conduct, and unfortunately we had to file those allegations under seal so I can't get into all the specifics but I will highlight one point, and that's the fact that these allegations are more expansive than what Yazaki pleaded guilty to. In other words, they are not limited to the guilty plea. Unlike some of the other cases you have heard about we pled facts above and beyond what is included in the guilty plea. So that's one big factor that I want to highlight. And if I can I will draw your attention the paragraphs in the complaint, it is in the auto-dealers' complaint paragraph 145 and 146, and it is included in the end-payers' complaint at paragraphs 118 and 119.

So what else do we have here? Well, what else do

we have that renders this broader conspiracy plausible? We have got the largest ever antitrust investigation. To date it has resulted in over $7 billion in criminal fines. 26 companies have pled guilty. In many of the guilty pleas the companies have admitted to price fixing products sold to multiple OEMs, not to just one OEM. And then we have got Yazaki, an admitted price fixer, they paid $470 million in criminal fines, they admitted to price fixing wire harnesses sold to multiple OEMs, and they admitted price fixing instrument panel clusters again sold to multiple OEMs. So this is a pattern. This is a pattern of behavior. This is an admitted habitual price fixer. We pled the likelihood of an amnesty applicant. We have allegations that support that. Then we have got Denso, another admitted habitual price fixer, they paid a $78 million fine, they admitted again to price fixing various products.

So, Your Honor, we come in here every time, and I think you see this, the case just gets bigger and bigger; each time we learn of new guilty pleas, we learn of new OEMs that are involved. So clearly these facts -- we cite the SRAM case to you and the SRAM case stands for the proposition that when you have a conspiracy in a related market, you have guilty pleas in a related market, there is an inference and it renders the parallel complaint more plausible that that conspiracy may have taken place in that industry. So we have

got guilty pleas, we have got specific allegations that go beyond the guilty pleas, and we have massive fines in the industry and we have got habitual price fixers. I think that's pretty strong stuff.

And so what are defendants doing again? They are desperately trying to distinguish this case from wire harness. So they say unlike wire harness you don't have specific allegations of market share, and they point to Twombly. Well, the direct purchasers talked about this before, Twombly is a case that involved parallel conduct, no smoking gun, no guilty plea, no specific allegation of conspiracy. And I would submit to you that when you have an express agreement like we do, when you have the smoking gun, you don't need market factors. Now, we pled and we can get into specifics that we pled about the market, we pled the inelasticity of the man (sic) in the barriers to entry and we pled the rising cost of fuel senders despite the fact that input costs remain steady, so we've got all the bells and whistles but we don't need to get there because we have got the guilty pleas and we have got the specific allegations and we've also got a market that is rife with conspiratorial conduct. So when you take all of those factors together as you are required to do, you can infer a conspiracy broader than one that the guilty plea is limited to.

Now, there is another argument that defendants

didn't raise here but they do raise it in their papers, and I want to address that, this notion that they dumped thousands of pages of documents on us and somehow that requires a heightened pleading standard which should go beyond Twombly because they dumped all of these documents on us. Well, the defendants admit in their guilty pleas that they concealed the conspiracy. I mean, they used code words, they had secret meetings. We are at the beginning of discovery, we have a DOJ temporary stay in place right now, we haven't taken a single deposition, most of these documents were produced helter-skelter along with wire harness production. We are not required to plead at this point every single aspect of the conspiracy, all that we are required to do is to demonstrate that it was plausible, and I would submit that we do that.

Now, there is another argument that Ms. Fischer raised today. She went well beyond the four corners of the pleading, and we pled -- and the dealers actually have a specific allegation about this that I think Ms. Fischer referenced, a fuel sender is not an insubstantial cost of the entire automobile. We don't plead anything about the price, we don't plead anything about how it is made. Ms. Fischer came in here with a demonstration, that's a summary judgment point, that's not a motion to dismiss point, but more importantly the issue is raised in wire harness that the

defendants made the same argument that wire harnesses are an insubstantial cost of the overall automobile and you rejected that argument because you recognized that maybe it would be difficult for plaintiffs down the line to potentially prove that, but for purposes of a complaint, for purposes of a motion to dismiss, we are just required to prove that the overcharge was fairly traceable, that it was fairly traceable down the chain, and Your Honor found that we did that in wire harness and we do the exact same thing here.

So unless you have additional questions for me I'm going to concede the floor to my dealer colleagues so they can address some of the state specific issues.

THE COURT: No. Thank you.

MR. REISS: Thank you.

THE COURT: We have five minutes to conclude so you're going to be cut real short.

MS. ROMANENKO: Your Honor, given that Ms. Fischer did not make any argument about the state-law claims we will --

THE COURT: I don't want any argument on the state-law claims because they are so detailed in each one, and it is like every time I look at them I have to sit down with my charts and, to be very honest, I really couldn't keep track of it unless there is something overarching that you want to say.

MS. ROMANENKO: Understood, understood. So I would like to start off by addressing Ms. Fischer's statement that perhaps the fuel sender is an inexpensive item and therefore we should not be permitted to bring claims for it. Judge Wilkins in the SRAM litigation stated defendants may not shield themself from liability by fixing prices on a relatively inexpensive item. It is not the law that you can choose to fix prices on something that you say is inexpensive and therefore there is no liability for you, you can hold it up in court and say we get to walk off scot free.

Ms. Fischer also raised a point about the amount of guilty pleas. This is not different from wire harness. In wire harness, for instance, the end payers filed suit against nine defendant families and there were five guilty pleas. So 55 percent of the defendant families had entered guilty pleas. The odds here are better. 50 percent of the defendants in this case have entered guilty pleas. In fuel senders 100 percent of the defendants in this case have entered guilty pleas in an auto part conspiracy case, namely I'm referring to Denso's guilty plea in heater control panels and ECUs.

Ms. Fischer also pointed to the amount of affected commerce set forth in the plea agreement. However, that affected commerce is for the limited time period that they pled to. It doesn't include any commerce from a period of

time before that which they pled to, and it also doesn't include the commerce that flows from a price-fixed contract that they won, let's say, in 2010 that goes for four to six years as our complaints allege. That is not the entirety of the commerce that's at issue in this case.

Ms. Fischer also made a point about the length of the conspiracy. She stated that that was a major factor in Your Honor ordering that the injunctive relief claim was not properly dismissible. We allege a conspiracy going from 2001 to the time of the filing of the complaint. There is a one-year difference between the class period alleged and the conspiracy demonstrated in wire harness and in this case. In fact, there are a number of similarities that I think it is worth looking at between the wire harness case and this case. And we should note these two defendants were both before you in the wire harness case. They both engaged in the fuel senders' conspiracy at the same time they were engaging in the wire harness conspiracy through the same type of collusive conduct, and now they are back here and they are making the same argument they made there. There they said if you look at the individuals who pled guilty they worked in the Honda, Toyota and Subaru departments, so it is not plausible that somebody who bought something other than that was injured. Now here they are back and they are saying let's limit this case to a certain OEM, but, Your Honor, we

already know that the defendants engaged in conduct beyond what they pled to.

I will refer Your Honor to paragraphs 145 to 146 of the dealership complaint on pages 39 through 40, and Your Honor can also look at our very first slide in the handout that we handed up.

Nor would it make sense to limit this case to one OEM based on the facts. Plaintiffs describe a sophisticated systematic conspiracy that functioned according to certain rules. Collusion was not comprised of isolated incidents planned on an ad hoc basis. These defendants were working together to maintain a certain order in the market, and I will refer Your Honor to paragraph 144 of the dealership complaint that is also replicated on the third page of Your Honor's handout. You don't create special systematic rules if you are just going to rig bids this one time, if it is just one little incident, one little bit of commerce. This is clearly an overarching conspiracy, and if Yazaki wants to look at guilty pleas let's look at its guilty plea for ICPs, that's a product that is closely related to and literally connected to the fuel sender, they work as a set, you can't have the gas gauge without the fuel sender, they are connected, the complaint explains a lot of areas where the two products overlap.

And if Your Honor could flip the page on the

handout, that information that we replicated in the first three bullet points can be found on pages -- paragraphs 116, 118 and 145(D) of the dealership complaint. Now Yazaki pleaded guilty to fixing prices to numerous OEMs for ICPs. Why would it fix prices to numerous OEMs for ICPs and only one OEM for fuel senders when if an OEM is buying an ICP it will be undoubtedly buying a fuel sender. They work as a set, the fuel sender is connected to the gas gauge, that's how the gas gauge works.

We should also take a look at the other related cases in this MDL. As we stated previously, Yazaki and Denso are both defendants in the wire harness case for instance. That conspiracy occurred at the same time as fuel senders, involved the same conduct, contained some of the same conspirators, both Yazaki and Denso, and that case was not limited to any OEMs on the motion to dismiss. We also know a number of defendants involved in the auto parts MDL have pled guilty to rigging bids and fixing prices to a whole host of OEMs beyond the ones to which defendants are trying to limit this case. I will just read off some of them; they include Chrysler, Ford, GM, Honda, Mazda, Suzuki, Mitsubishi, Nissan, Toyota, Subaru and two German OEMs. These companies, and I will direct Your Honor to the last slide, these companies, Denso and Yazaki, they advertise on their web sites the fact they supply nearly every OEM. How can we limit this case to

one OEM at the motion to dismiss stage when these are the facts?

And as Ms. Fischer admitted, we do allege that Yazaki and Denso -- sorry, that only a handful of manufacturers supply OEMs with fuel senders. None of this points to it being rational to limit this case to one OEM at the motion to dismiss stage.

THE COURT: Okay.

MS. ROMANENKO: Just one more point with regard to the injunctive relief point that Ms. Fischer made. She said well, we have guilty pleas, the guilty pleas make statements that the government hopes that we are not recidivists, and as Your Honor knows, you rejected speculation by collective defendants that the pleas will prevent further misconduct, but I would also point, Your Honor, for instance, to numerous defendants in this auto parts MDL who pled guilty to engaging in the conspiratorial conduct in 2011, that's a year after the dawn raids occurred. It just cannot be determined that just because this guilty plea was entered it is appropriate to decide at this time that injunctive relief is not necessary.

THE COURT: Okay.

MS. ROMANENKO: Thank you -- oh, I apologize. One more thing, if there is one more minute, my colleague, Jonathan Cuneo, will address unjust enrichment.

MR. CUNEO: Thank you, Your Honor, Jonathan Cuneo.

I don't intend to go through this state by state although I have spent a lot of time on two occasions reading the cases from every state. What you have is an incredibly rich mosaic of circumstances that involve kind of competing claims, like up in New Hampshire the lead case is a case in which somebody who didn't have a real estate license sold something, whether that person could collect a commission was the issue. Down in South Carolina there is a case of medical providers who provided services to pretrial inmates and made a claim against the county. Same thing in Utah, they came out in different ways, but what you have in Mississippi is there is a case with a business where a dissatisfied -- whose accountant got them in trouble with the IRS and so the employer sued for effectively back wages, and what you've got as you go around this are situations which there is not really a contract remedy that applies and the Courts are called upon to determine the equities of the situation consistent with section 1, but I will tell you what they don't have, none of the cases I saw involved a deliberate attempt or scheme to steal money from anybody else. There wasn't a single case that I saw that involved a criminal conspiracy. There wasn't a single case that I saw that involved any involvement by the United States Department of Justice. There wasn't a single case that involved an

indictment or information or a multi-hundred million dollar fine. And so those are circumstances that in my judgment should in a very broad way inform the equity powers of this Court. And there are courts in the past -- there are really competing presence in this area, and there are competing presence in the antitrust area, but Judge Edmunds in the Cardizem case correctly looked at what the interests that were involved in and she easily disposed of the principal objection, and that is that an indirect purchaser doesn't directly deal or confer a benefit upon the defendant. And what she said there is direct doesn't equal privity, means that money flowed from the plaintiff to the defendant, and the test really is whether the benefit and the detriment flowed from the same conduct.

In this case it clearly does, so it is our position that as the Court looks at these things and chooses among competing presence it should keep with the overall context is in mind.

Now, as to the issue of do we have an adequate remedy of law? Well, I think you just heard the defendants say for a lot of times we don't. And, of course, we say we do but it is an alternative remedy. Courts that talk about adequate remedy of law, what they are concerned about is the plaintiff doesn't collect damages and collect restitution too, so it is really premature to make that kind of a

determination.

So those are the points that I wanted to make, Your Honor. I promised to be brief, and I hope I have kept that promise. Thank you very much.

THE COURT: Thank you. Ms. Fischer?

MS. FISCHER: Thank you, Your Honor. Just three short points.

First, both counsel pointed out that they had, in fact, pled facts. They pointed to paragraphs 144, I believe, to 146 of the auto-dealer complaint and paragraphs 118 to 119 of the end-payer complaint, both of those detailed allegations that are completely consistent with the Yazaki plea, it does not go beyond the sales to the single OEM referenced in the plea, and that's precisely the problem that we keep pointing to.

Secondly, with all due respect, Your Honor, I think there is confusion as to what constitutes a factual allegation versus what constitutes a bare allegation disentitled to the presumption of truth. I submit, Your Honor, that except with respect to those facts that relate to the plea and that relate to what was pled guilty to and in the exemplary conduct examples, that's all they have done is put out conclusory assertions. And I refer the Court to Iqbal, 556 U.S. 662, specifically at pages 680 to 681, where the Supreme Court rejects conclusory allegations, just

calling somebody a principal architect without facts of a plan is not enough, and I refer the Court to that in analyzing their allegations.

Lastly I want to talk about two of the slides. The second to the last slide that the auto dealers gave you claims that Yazaki's plea on instrument panel clusters said we plead guilty with respect to numerous manufacturers. The word is certain, certain is not numerous.

The last page says -- the last page was referred to as showing you all the customers that Yazaki and Denso sold to. Those are customers of auto parts, they are not necessarily customers of fuel senders. They still have not pointed to a single customer beyond the one OEM identified in the plea and the conduct.

Lastly, with respect to unjust enrichment we refer you back to what you did before, they still have not pled the facts -- the required factual basis of an unjust enrichment claim on a state by state basis, that's why you rejected the claim initially and that's why it should be rejected here, but it would fail anyway for all the reasons we detailed in our complaint and frankly for all the reasons set forth on the last page of my handout to you.

Thank you very much, Your Honor.

THE COURT: Thank you. Okay.

MS. ROMANENKO: Very quickly. This is only going

to address unjust enrichment, just in response to what Ms. Fischer stated.

This Court dismissed the unjust enrichment claims in wire harness because, quote, IPP's failure to identify the unjust enrichment laws of any particular jurisdiction subjects the causes of action to dismissal. There is no federal common law of unjust enrichment. So this was the concern that we were seeking to allege unjust enrichment claims under our common law of unjust enrichment.

So we understood that before when we saw the motion to dismiss and we modified our claims from the wire harness complaint. Our complaint states that dealerships seek damages under the unjust enrichment laws of the indirect purchaser states. The unjust enrichment counts state that plaintiffs bring this claim under the laws of all states listed in the second and third claim supra, and the second and third claims are, of course, those that contain the dealers' causes of action under the consumer protection and antitrust laws of the indirect purchaser states.

So what we have here is a statement by the defendants that it is necessary to specify what state laws are being invoked so defendants know what to analyze, and we have done that and they have obviously analyzed them from the motion to dismiss and the opposition they have gone through in a state by state basis and attacked our unjust enrichment

claims under the laws of every one of the indirect purchaser states. I don't think that they can possibly point you to a complaint that does any more than what we have done here, so I think it is just reasonable for us to say that our unjust enrichment claims are properly analyzed this time.

THE COURT: Thank you, Counsel. All right. The Court will issue opinions hopefully soon. Thank you very much, all of you. We will see you in June at 10:00.

THE LAW CLERK: All rise. Court is in recess.

(Proceedings concluded at 5:05 p.m.)

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CERTIFICATION

I, Robert L. Smith, Official Court Reporter of the United States District Court, Eastern District of Michigan, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing pages comprise a full, true and correct transcript taken in the matter of In Re: Automotive Parts Antitrust Litigation, Case No. 12-02311, on Wednesday, February 12, 2014.

s/Robert L. Smith
Robert L. Smith, RPR, CSR 5098
Federal Official Court Reporter
United States District Court
Eastern District of Michigan

Date: 03/06/2014

Detroit, Michigan